

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of Hearing: 7 December 2018

Case Number: 312 /2018

NEWCASTLE COMMUNITY MEMBERS

COMPLAINANTS

V

NEWCASTLE COMMUNITY RADIO

RESPONDENT

COMMITTEE Prof Kobus van Rooyen SC (Chairperson)
Dr Keabetswe Modimoeng (ICASA Councillor)
Mr Peter Hlapolosa
Mr Mzimkulu Malunga
Mr Jacob Medupe
Prof Kasturi Moodaliyar
Mr Jack Tlokana

For the Complainants: adv R Pottas instructed by N Masondo

From the Respondent and the Community: L Sithole, B Nondala, T Zondi, Z Mtshali, N Mtshali

From the Coordinator's Office: Ms Xola Mantshintshi

Coordinator: Ms Lindisa Mabulu

JUDGMENT

JCW VAN ROOYEN SC

INTRODUCTION

[1] Newcastle Community Radio is a broadcaster which is licensed by the

¹ An Independent Administrative Tribunal at the Independent Communications Authority of South Africa (ICASA) in terms of Act 13 of 2000 and section 192 of the Constitution of the RSA. It, inter alia, decides disputes referred to it by the Authority or filed with it in terms of the Electronic Communications Act 2005. Such a decision is, on application, subject to review by a Court of Law. The Tribunal also decides on complaints from outside ICASA in terms of the Electronic Communications Act 2005, the Broadcasting Act 1999 or the Postal Services Act 1998 (where registered postal services are included). Where a complaint is upheld, the matter is referred to the Council of ICASA with a recommendation as to an order, if any, against the licensee. Council then considers an order in the light of the recommendation by the CCC. Once Council has decided, the final judgment is issued by the Complaints and Compliance Committee's Coordinator. Such a decision is, on application, subject to review by a Court of Law. Where a complaint is not upheld by the CCC, the finding is also referred to Council.

Independent Communications Authority of South Africa (“ICASA”). It provides, according to its licence, radio services in a part of Kwazulu Natal, a Province of the Republic of South Africa.

COMPLAINT

[2] A complaint was received by the Coordinator of the Complaints and Compliance Committee from members of the community, which is served by the Radio Station. The Complaint and Responses (which are substantially left in their original form) read as follows:

As a Newcastle community we are lodging an urgent complaint because:-

- The situation of the Station is very bad right now.
- Those leaders who claim to be official leaders are fighting each other which causes the Radio Station not to operate accordingly.
- Some other times the Radio Station plays Juke Box, sometimes the Radio Station is not functioning, “Off Air”.
- All the Presenters are not working because of leaders who fight each other.

That is why we are requesting an urgent resolution to these complaints.

For more information, please contact – an email address plus mobile phone numbers are provided.

The reason we (are) laying this complaint is because we are not satisfied with operations of the Radio station and the higher corruption as well. As we speak right now a Newcastle Community Radio has 3 teams of board members and they are fighting each other.

The other reason as a community, we are not satisfied with them operating our Radio Station; we are all clear in every organisation there must be one leader who will take responsibility for everything. Therefore there must be one leader who will take responsibility for everything. Therefore there must be one board who will be responsible for everything that affect the station.

Team A(1)

As we speak we have Nhlanhla Mtshali who claims to be Station Manager and Deputy Chairperson of the board. As we are a community we are aware that they own an ABSA Account that does not assist the operations of the radio station.

- Clients are using the ABSA Account for payments of their advertisement.
- All that money is received by Mr Thami Zondi, Mr. Nhlanhla Mtshali and Andile Masondo.
- The money is always been withdrawn left right and centre (ABSA).

Team B(2):

On the second team we have Luka Sithole who claims to be a chairperson of the board who (is) also a signatory in a Nedbank Account and in this account the money that has been paid by clients is received by Mr Sithole and Mr Nzima. That money is not assisting the Radio Station Operation.

They use the money for their own personal interest not for Radio station.

Team C (3)

We also have Mr. Bheki Nondala who claims to be one of the board officials in the radio station. He also owns the FNB (account) with the name of the station. The problem with this account is, he claims the station money using this account. He uses that money for his personal interest not assisting the station exactly as other groups as well (FNB).

The main reason as a community we decided to stand against this:

The station is attached by Sheriff of the Court because of the bills that [have] not been paid. No one is willing to take responsibility but each and every month they receive a lot of money in their accounts. Currently the radio presenters have not received the stipend for almost five months. They cannot even afford a transport to go to work. The prime slot is currently broadcasting by 2 people. The problem with this Radio Station [is that] sometimes it takes 3 to 4 days playing Jukebox. Sometimes it takes five to six hours off air because no one is responsible for that.

When we are reporting as a community they don't take our complaint seriously, they even said they don't take community members. Even Mr. Ndawo Khanyile is aware of this matter.

We also decided to open the case against this fraud. The case number will follow as soon as the investigation takes place by SAPS.

- We humbly request the ICASA to take action against all of this complaints immediately.
- The allegation [is] that they don't comply with ICASA.
- When they held [an] AGM they said everything went well and they [fed] lies to the community.

It [has] been happening for a long period of time.

We are requesting the ICASA to stop these entire groups to operate until AGM takes place to appoint new leaders. The relevant documents are attached.

Yours sincerely

Peter Mnguni (with email address provided)

COORDINATOR'S SUMMARY OF THE COMPLAINT

[3] Newcastle community members are alleging that the Respondent Radio Station has contravened the following clauses of Regulation 10A of the *Regulations on Standard Terms and Conditions* as amended in 2016 Schedule 1:²

1. Sub-regulation 4 which provides that a licensee must use profit and other income for the promotion of its broadcasting activities and in the service of the community. Mr Bheki Nondala, Mr Luka Sithole, Mr Nzima, Mr Thami Zondi, Mr Nhlanhla Mtshali and Mr Andile Masondo are alleged to have used the Stations's income for their own personal interest and not for the promotion of its broadcasting activities and in service of the Newcastle community.

² **10A. General obligations of licensees** (note: some sub-regulations are not included hereunder)

(1) A Licensee must: (a) inform the Authority, in writing, within fourteen days of any judgment or judgments given in a court of law against it; and (b) any conviction in respect of an offence involving dishonesty of any of its directors or senior managers. (2) A Licensee must keep the following records, in accordance with the template determined by the Authority and provided to the Licensee, relating to its broadcasting activities and provide same to the Authority on a quarterly basis: (a) a log of all advertisements broadcast; (b) a log of the percentage of air-time per hour allocated to advertisements; (c) a log of all sponsorships received for programmes, news, game shows, welfare activities or similar programming together with details of payment, financial or otherwise, received for such sponsorship; and (d) a log of programmes broadcast. (3) A station must clearly identify itself at intervals of not more than thirty minutes. (4) A Licensee must use profit and other income for the promotion of its broadcasting activities and in the service of its community... (7) Ownership and Control of Community Television and Community Radio: (a) a Licensee must be owned by community members with the Board of Directors as custodian of the licence. (b) a Licensee must encourage the community within its coverage area to participate in ownership, management of television station or radio station. (c) a Licensee must be managed by person(s) tasked by the Board of Directors to ensure the licensee's daily operation. However, this excludes a private company since a community television or class sound community radio is non-profit. (d) The Board of Directors/ Trustees and station management must not occupy dual roles with regard to being managers/presenters at the radio station. (8) The programming of community television or community radio must meet the needs of community members within its broadcasting coverage area by encouraging the following: (a) The participation of community within its coverage area in the production of content; and (b) The majority of content produced must be from the coverage area. This is to ensure that involvement of content producer(s) outside the coverage area is limited as to enable the reflection and participation of local producers... (10) The broadcast of pre-recorded material must be limited to ensure coverage of immediate programmes like current affairs, infotainment, and news with the exception of content like dramas or movies.

2. Sub-regulation 7(a), which provides that “a licensee must be owned by community members with the Board of Directors as custodian of the licence.” The allegation is that there are three teams of Board Directors and there is no proper Board of Directors governing the Station.

3. Sub-regulation 7(c), which provides that a licensee must be managed by person(s) tasked by the Board of Directors to ensure the licensee’s daily operation. However, this excludes a private company since a community television or class sound community radio is non-profit. The allegation is that the Board of Directors has failed to task a person(s) to ensure the daily operation of the station, in that the station is constantly off-air and playing jukebox music for almost three to four days. The production of programmes entails the following: involvement of the community and local organizations in production, managing volunteers and professional relationships, ethics, news, features, current affairs, field and studio equipment use, research writing, presenting, interviewing, editing and sound effects. If this allegation is true, it means that the station does not have a set programme. It is therefore requested that a detailed programming of the station, time slots and the name of presenters and their contracts with the radio station be provided to the CCC Coordinator.

4. Regulation 7(b) which provides that a “licensee must encourage the community members within its coverage area to participate in ownership, management of a television station or radio station.” The allegation is that the Board of Directors did not allow for the participation of the community members in the station. When they raised complaints, the Board of Directors did not entertain their complaints.

COORDINATOR’S DIRECTIVE

[4] Having considered the above allegations of contraventions, the Board of Directors of Newcastle Community Radio was directed by the Coordinator of the CCC to provide the CCC Office with the following documents:

- (a) Audited Financial Statements of Newcastle Community radio for the past four financial years i.e.: 2014/2015, 2015/2016, 2016/2017, and 2017/2018. This is to authenticate Schedule 1, 10A regulation 4 of the Regulations on Standard Terms and Conditions as amended in 2016, to prove that the income was used for the promotion of its

broadcasting activities and in the service of its community e.g.; stipend payments for the presenters.

- (b) The Station Manager's signed contract of employment, detailing his full name and date of appointment. This is to authenticate Schedule 1, 10A regulation 7(c) of the Regulations on Standard Terms and Conditions as amended in 2016, in that the station must be managed by person(s) tasked by the Board of Directors to ensure the daily operation of the station.

RESPONSE TO THE COMPLAINT

[5] Date: **27 September 2018**³

From: **Luka Sithole**, Newcastle Community Radio

Sir / Madam

I hereby reply to the email I received from your office through the complaint which is based on the grievances that is raised and tabled before you.

That first I would like to respect the attention which you took regarding the matter, special when it is ICASA.

On these matter of NCR as Newcastle Community Radio we feel very happy if now the office of ICASA will take the stand as we engage with Mr. Ndawo Khanyile, even to Mrs. Mashego of ICASA when all things gone opposite direction of the compliance but we never get assisted when they were supposed to come or write the letter that state who / which board of directors are in charge of NCR.

These simple mean that since we were undermined by everybody as the board (previous board that was voted out at the AGM that was held on 27 July 2017, that is the one who confusing and undermine the authority that is invested by community to us as the board).

That is the explanation that my board was taken out 09 July 2018 by Mr Zondi and Mr Mtshali that we didn't ever had the free mean of operating that has leaded on the point that even Management, presenter, community at large was confused from whom to get information...⁴

Since the NCR had the new Board of Directors from the 04 April 2018's AGM where Mr. Peter Mnguni and Mr Mtshali was not elected at the AGM as the board they never got rest or accept the point, that we are the new elected board they efforts has come these far in such the way that they said if they can't win the battle they will go to CCC so that ...⁵ cc to close the radio rather then.

³ Original quoted.

⁴ Irrelevant.

⁵ Not legible.

These mean CCC will be used at all cost to close the radio as Mr Mtshali tried to change our NPO and underwriter NCR on his NPO certificate.

I even saying all these complain is based on that us, to be get read out as the board and call AGM as they try and also announce that they want to get us out as the result they even told all presenter not to work.

My board is transparent and keep all information even to the last respective listener of our community that is why you can see they even have bank statement and all even restricted document because we are the respect for.

It is true enough that Mr Mnguni is the leader of community that complained not that he is revolting the NCR, he supposed to have also the bank statement of ABSA on the account which is ran by Mr. Zondi and Mr. Mtshali to see and to show all what is happening.

Take notice all the fingers on the bank statement that is underline is the money that we withdrew as the instruction of the board resolution and we also had the minutes as it was demanded by our Manager to pay presenters transport fee and stipend. The other money was refunded to the stakeholders that said Mr Mtshali ordered them not to pay / deposit at Nedbank account as he said they must deposit at Absa account so all their money was refunded as their right.

The letter from sheriff or attachment it is the deposits that was made by Mr. Zondi previous chairperson and Mr Mtshali between 2014 and 2016.

When I took over from 2017, I founded that NCR is owing a lot of people but others we managed to pay.

Present the situation is very serious since 4 months down the line my board was invaded and the Radio Station was hijacked. I had never be able to take control as even in the premises of the casino where our radio is station (is) I am not allowed on the instruction that was issued by Mr. Zondi and Mr. Mtshali.

Last I can be so glad is your office can come to Newcastle and have the moment where we can engage to all the situation and explain. Please I am appealing. Maybe it can help NCR on the behalf of the community.

Yours regard

Luka Amora Sithole

The Chairperson of the Board

[6] There is also a letter from the (suspended⁶ 22 May 2018) Station Manager(Mr B Nondala) dated **3 October 2018** to the Coordinator of the CCC. He states as follows – summarised:

I have no Board and never have I had a Board. I am the station manager...The first board I worked with was the Board chaired by Mr Dinky Nkabinde and Mr Makhoba as my station manager. The position that I held was a programme manager from 2012 September to 2013. The station was using an FNB account that I am being accused of using with account number.

⁶ He stated that he had never been given a hearing, but was simply suspended.

When the new Board was elected July 2013 (we) stopped using the FNB Account and finally that account was closed by the Bank. I find myself frustrated as I have never been a signatory to this account. I have never had access to this account. Full evidence must be brought by the accuser.

The problem we are facing at the radio station is that there are people who want to be in the leadership of the station but do not have man power to vote for them at AGM's. So they use all fabricated liars and information that is not properly acquired from the correct source. The listeners club we have is also a source of problems as the chairperson of the club is also an office bearer of a political party and he is the main source of problems. At the moment the station is being taken over by the former board members by the help of ICASA officials who were present when those members were voted out at the AGM held on 29 July 2017. But when there were problems I consulted Mr Ndawo Khanyile to officiate the newly elected board that was elected by the community on the 7th April 2018. He told me I must send him attendance registers and a letter from the former chairperson Mr Zondi. I did that but he said he cannot accept that as Mr Zondi was not present. But a letter was written by Mr Zondi giving a green light for the AGM as he was aware of it and an invitation was sent to him 21 days before the date. The newly elected Chairperson went several times to ICASA Offices to ask for help, but was later told that ICASA is distancing themselves from the issues of Newcastle. They also sent us a letter containing a judgment by the Court against ICASA and SABC that has no relevance to the matter of Newcastle radio. And that led to all the developments that we have today, where political affiliated persons for the sake of their interest in the station for their political gain are using this opportunity to manipulate the information as they are now interested in taking over as the Board.

Should you need more information I will be ready to help. I have attached the Minutes of the AGM that was held on 29 July 2017 that dismissed the Board. The interim Board was elected. I also attach minutes of the AGM that was held on 7 April 2018. Also attendance register and the letter that was written by Mr Zondi. Also a letter and the judgment that was sent to the station by ICASA Station Manager 3 October 2018.

[7] Earlier correspondence in the file consists, inter alia, of the following relevant part of a letter from Mr T Zondi (indicated in the letter as *Chairperson* of the Board):

Newcastle Community Radio

Date 10 July 2018 Attention: Newcastle Community Radio Board; Mr. Ndawo Khanyile (ICASA);The Management and Security Black Rock Casino. Ref: The announcement of the Newcastle Community Radio Management (NCR) until the official Annual General Meeting (GM)I am Horatius Thamsanqa Skhongozele Zondi and I am the Chairperson of the NCR Board of Directors. In terms of ICASA Act and the NCR Constitution I am the one who should call for the electoral AGM. We are planning to hold

the AGM as soon as all reports are completed and submitted. We plan to have all done before 11 August 2018.

We are informed that there are people who are not patient for this process. This is causing confusion for our Land Lord who is Black Rock Management and Security. It also chasing the advertisers away. There is a lot of non-compliances with ICASA act. ICASA will close the NCR permanently if there is no compliance. We must also make sure that the core business of our Land-Lord is not disturbed. So as to move forward I want the following people to take the NCR forward administratively until the electoral AGM in August 2018.

SURNAME	NAME	POSITION	ID. NUMBER
Mtshali	Nhlanhla	NCR Administrator	7703095337087
Nondala	Bheki	Marketing & Promotion	7602075394086
Mokoena	Terrence	Programme Coordinator	7310175797089
Mdluli	Mthofi	News Coordinator	

This will be the operational people and their behaviour and their job will be evaluated on weekly basis. If there is any dissatisfactions the system will be revisited. We are also requesting the community member to give us a chance to bring the station back to where it belongs. If we fail to comply the station will be closed permanently.

Mr. Nhlanhla Mtshali (The Administrator) will submit the name list with ID numbers of the programme presenters to the Black-Rock Management and Security today. This also includes their radio slot time. Visitor for presenters will not be allowed.

Thank you

Yours Truly H.T.S. Zondi (Board Chairperson)

FINDING BY THE CCC ON THE COMPLAINTS

[8] We repeat the charges and make a finding on each thereafter:

ONE: Regulation 4 which provides that a licensee must use profit and other income for the promotion of its broadcasting activities and in the service of its community. Mr Bheki Nondala, Mr Luka Sithole, Mr Nzima, Mr Thami Zondi and Mr Nhlanhla Mtshali and Mr Andile Masondo used the Stations's income for their own personal interest and not for the promotion of its broadcasting activities and in service of the Newcastle community.

FINDING: It is indeed so that the correct procedures were not followed. Each licensee – as is the case with any representative Board - must follow the Board of the licensee and the relevant Bank's procedures when dealing with bank accounts. However, given the parameters of an inquiry such as the present, it would be unfair to make a finding against individuals. Explanations have been given at the hearing of this matter, which most definitely indicate that correct

procedures were not followed. And, in that sense, the Radio Station is found to have contravened the said Regulation. When dealing with bank accounts, the Board must follow correct procedures. No financial statements were filed, in spite of the directive on behalf of the CCC to make audited Financial Statements available. There is, however, not sufficient evidence before the CCC that shows that the monies withdrawn were used for personal purposes. Although the CCC has inquisitorial powers in terms of section 17B of the ICASA Act, the Constitutional Court⁷ has held that these powers must be exercised with fairness. Given the vague claims placed before the CCC and the explanations given, it would indeed be unfair to delve deeper for purposes of this matter which, in the main, has a bearing on which Board, Chairperson and Station Manager fills the position presently. If there has been theft or fraud, that would, in any case, resort with a criminal court where the Prosecution must prove its case beyond a reasonable doubt. This inquiry cannot and should not replace that of a Criminal Court, with its requirement that the State must prove its case beyond a reasonable doubt.

TWO. Regulation 10A7(a), provides that “a licensee must be owned by community members with the Board of Directors as custodian of the licence.” The allegation is that there are three teams of Board Directors and there is no proper Board of Directors governing the Station.

FINDING: Whatever the position may have been in the past – before 2018 – no attempt was even made by the Respondent, through three groups which represented it, to show that this duty was complied with by the radio station in 2018.

THREE Regulation 10A7(c) provides that a licensee must be managed by person(s) tasked by the Board of Directors to ensure the licensee’s daily operation. However, this excludes a private company since a community television or class sound community radio is non-profit. The allegation is that the Board of Directors has failed to task a person(s) to ensure the daily operation of the station, in that the station is constantly off air and playing jukebox music for almost three to four days. The production of programmes entails the following: involvement of the community and local organizations in production, managing volunteers and professional relationships, ethics, news, features, current affairs, field and studio equipment use, research, writing, presenting,

⁷ *Islamic Unity Convention v Minister of Telecommunications 2008 (3) SA 383 (CC)* at para [47].

interviewing, editing, sound effects. If this allegation is true, it means that the station does not have a set programme. What is required is a detailed programming of the station, time slots and the name of presenters and their contracts with the radio station.

FINDING: Although the Station Manager, who took over the reins on 18 October 2018, gave satisfactory evidence as to the station having, after his appointment, been broadcasting regular programmes during the day, it is clear that there was a period, after the previous station manager had been suspended in April 2018, that the Radio station was in substantial omission of its broadcasting duties. Evidence before the CCC was that since the new station manager was appointed, the station was again complying with its duties between 70 and 75% during the day. The Respondent was, thus, in contravention of its duties, at least from when Mr Nondala was suspended as Station Manager. The matter of the validity of the suspension of the previous station manager is not a matter for the CCC. Such a matter would have to be filed with the appropriate authority, the Commission for Conciliation, Mediation and Arbitration, which is a dispute resolution body established in terms of the Labour Relations Act, 66 of 1995.

FOUR. Schedule 1, 10A regulation 7(b), which provides that a “licensee must encourage the community members within its coverage area to participate in ownership, management of television station or radio station.” The allegation is that the Board of Directors did not allow for the participation of the community members in the station. When they raised complaints, the Board of Directors did not entertain their complaints.

FINDING: Once again, the finding goes against the Respondent. There is no evidence that, at least during 2018, this duty was complied with.

[9]Coordinator’s Directive

The Coordinator, in the preparation of this matter for the CCC, required the following documentation from the Licensee:

(a) Audited Financial Statements of Newcastle Community radio for the past four financial years i.e.: 2014/2015, 2015/2016, 2016/2017, and 2017/2018. This is to authenticate Schedule 1, 10A regulation 4 of the Regulations on Standard Terms and Conditions as amended in 2016, to prove that the income was used for the promotion of its broadcasting activities and in the service of its community e.g.; stipend payments for the presenters. (b) The Station Manager’s signed contract of employment, detailing his full name, and date of appointment. This is to authenticate Schedule 1, 10A regulation 7(c) of the Regulation on Standard Terms and Conditions as amended in 2016, in that the station must be managed by person(s) tasked by the Board of Directors to ensure the daily operation of the station.

The above directive from the CCC was not complied with
At the hearing of the matter certain documentation was also required from the Respondent - the directive from the CCC was that such documentation also be delivered to the Coordinator within two weeks. There was, once again, no reaction from the Respondent

FINDING

[10] The CCC firstly applied its mind to the question whether it should not, in the light of the complaint and the evidence at the hearing, advise Council to withdraw the licence of the Respondent. However, Adv Pottas, acting for the Complainant, ultimately amended, obviously as instructed, his client's call for the withdrawal of the Respondent's licence. He stated, on behalf of his client, that if the omissions are corrected by the Respondent, it could still be saved from such a drastic order. It was also of particular importance that, given the new station manager, who had assumed office on 18 October 2018, the Station was again, according to the evidence before the CCC, back to 70-75% performance. In the evenings, it was conceded, programming had not again reached its past level. In fact, no planned programmes could be mentioned at the hearing. The Station Manager, however, emphasised that he had only been appointed on the 18th October 2018 and had, accordingly, only been in the position for six to seven weeks. He would, according to his evidence, attend to the evening schedule as soon as possible.

[11] Another matter which has to be addressed is that two persons are claiming that they had been elected to the position of Chairperson of the Board: Mr T Zondi and Mr L Sithole. The First in July 2017 and the second in April 2018. We have come to the conclusion that it would be in the best interests of the station to find that Mr Zondi is the Chairperson. He was elected at the large July meeting, and despite questions about the legality of that meeting, it would make good sense to apply the presumption of legality⁸ to that meeting. The evidence

⁸ *Omnia praesumuntur rite esse acta donec probetur in contrarium* – See Zeffertt & Paizes (formally Hoffmann & Zeffertt) *The South African Law of Evidence* 3 ed (2017) at 225 – 6; *Lawsa* fn 6 para 342; *Boddington v British Transport Police* [1999] 2 AC 143 (HL) ([1998] 2 All ER 203) at 210 (All ER); see also *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* 2008 (5) SA 171 (CC) (2008 (10) BCLR 969; [2008] ZACC 10) paras 260 and 284; *Airports Co SA Ltd v Airport Bookshops (Pty) Ltd t/a Exclusive Books* 2017 (3) SA 128 (SCA).

is also that Mr Zondi had, during the meeting, consulted with two representatives of religious groups as to procedure. They are regarded as “stakeholders” in the radio station. Their advice was to continue with the election. And that was done. We, accordingly, find that the evidence, judged as a whole, point towards Mr Thami Zondi being the present Chair of the Board. That would include all members of the Board who were elected during that meeting. Given the fact that the Complainant, via its advocate, Mr Pottas, amended its plea for a withdrawal of the licence to an upholding of the complaint, subject to the condition that the Respondent be granted the opportunity to rectify its errors, the withdrawal of the license was no longer on the agenda. In any case, despite the contraventions, the situation has improved substantially since the appointment of the new Station Manager. Withdrawal is, in any case, a particularly drastic step. The Coordinator was informed on 6 March 2019 that the position of Station manager is presently (March 2019) filled by Mr Zwelithini Mtshali as an interim Station Manager. Mr Mtshali addressed us as part of the Respondents and testified that he had been involved in the administration of the Station. There is, accordingly, no reason to doubt that he would continue with the plans of the station manager, who testified before the CCC.

ADVICE TO COUNCIL AS TO AN ORDER IN TERMS OF SECTION 17E OF THE ICASA ACT

In upholding the Complaint (as amended at the hearing) the following advice is provided to the Council of ICASA in making an order in terms of section 17E of the ICASA Act.

Section 17E of the ICASA Act, inter alia, provides as follows:

The Complaints and Compliance Committee may recommend that one or more of the following orders be issued by the Authority, namely ... (c) direct the licensee to take such remedial or other steps [not]⁹ in conflict with this Act or the underlying statutes as may be recommended by the Complaints and Compliance Committee;...

⁹ According to case law the omission of a word, which should obviously be part of a Statute, may be corrected by the judicial body applying it, if the error is an obvious printing error.

ADVICE: That the Council of ICASA orders as follows:

(1) **Firstly** there is the dispute about the identity of the Chairperson of the Board. The July 2017 meeting at which Mr Zondi was elected as chairperson of the Board is regarded as the most recent expression of the will of the community represented at that meeting. The presumption of legality, quoted above, favours the legality of the vote at this meeting. Although there was also some evidence of a meeting at 06:00 or 08:00 on that day, the CCC is of the opinion that the evidence favours the resolutions taken at the later meeting on that day where Mr Zondi and other members of the Board were elected. It would be in accordance with certainty, practical necessity and in the community's interest, for Council to confirm that the Board and the Chairperson elected on that occasion is presently the Board as from the date that they were elected in July 2017.

(2) **Secondly** – upholding the essence of the complaint insofar as broadcasting and financial controls are concerned - the advice to the Council of ICASA is that Council orders as follows:

(a) A full Report must be filed with with ICASA by the station manager (also signed by the Chairperson of the Board) as to the state of the broadcasting by the Respondent at the end of June 2019. A detailed report must be included as to the programmes provided in March, April and May 2019, with the dates and times of the broadcasts.

(b) A similar Report must be filed by 30 November 2019 and 31 January 2020.

(c) At the end of August 2019 a report must be filed by the Chairperson and the station manager with ICASA concerning the Bank account or accounts of the radio station including the identity of the person(s) mandated to make withdrawals. This must include the bank statements for May, June and July 2019 and include the name of the three persons who are mandated by the Board to make withdrawals. At least two of such members must sign all withdrawals. The Station Manager will, for this purpose, be regarded as a Board Member.

(d) The Station Manager must by end December 2019 file a full report with ICASA on how the community was consulted from June to end November 2019 as to broadcast content and what the result thereof was. Dates and locations of meetings must be provided and confirmed by the Chairperson of the Board. A plan of such consultation for 2020 must also be included.

(e) The Chairperson of the Board must call an Annual General Meeting before the end of November 2019. The Meeting must be held at a readily accessible location, approved by the Board. The Minutes of that meeting must be filed with ICASA before 16 December 2019.

(f) The Annual Financial Statement of the Radio Station, as approved at the Annual General Meeting 2019, must be filed with ICASA before 16 December 2019.

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

Chairperson

15 March 2019

The Members agreed