



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 5235/2024

In the matter between:

SYDNEY TSHOKOLO FUBANE

Applicant

*(In his capacity as the Station Manager of
Mosupatsela FM Stereo)*

and

JIM JOSEPH MOOKO N.O.

First Respondent

MOJALEFA ABRAM MNYANE N.O.

Second Respondent

MOEKETSI DAVID TSHEISI N.O.

Third Respondent

MOEKETSI MOKHETHI N.O.

Fourth Respondent

*(in their capacities as members of the
Board of Directors: Mosupatsela FM Stereo)*

[hereafter collectively referred to as "the Board"]

INDEPENDENT COMMUNICATIONS AUTHORITY

OF SOUTH AFRICA (ICASA)

Fifth Respondent

Neutral citation: *Fubane v Mooko N.O. and Others* (5235/2024) [2025] ZAFSHC
259 (25 August 2025)

Coram: Reinders J

Heard: 6 February 2025

Delivered: 25 August 2025

Summary: *Locus standi* – declaratory and interdictory relief – Board of Directors elected at Annual General Meeting

ORDER

1 The fifth respondent is ordered to refer the dispute in respect of the lawful Board of Directors of Mosupatsela FM Stereo, to its Complaints and Compliance Committee (CCC) on the papers filed in this application (duly supplemented if so elected by the parties) within ten (10) days of service of this court order,

2 Each party is ordered to pay its own costs.

JUDGMENT

Reinders J

[1] Mosupatsela FM Stereo is a community-based radio station, broadcasting from Botshabelo in the Free State Province. Although the music broadcasted by the radio station might be harmonious, its governance and management seem to be out of tune.

[2] The applicant, as cited, is Mr JJ Fubane who deposed to affidavits on 12 September and 6 December 2024, stating that he acts in his capacity as the station manager of the radio station. The first and second respondents are cited as respectively the chairperson and secretary of the Board of Directors of the station (the board), whilst the third and fourth respondents are cited as members of the board. The fifth respondent is the Independent Communications Authority of South Africa (ICASA), a juristic person established in terms of s 3(1) of the Independent Communications Authority of South Africa Act 13 of 2000 (the ICASA Act). ICASA did not file an opposition to this application. For purposes of this judgment, reference to the respondents is only in respect of the first to fourth respondents who opposed the relief claimed by the applicant, with separate reference to ICASA where applicable.

[3] The applicant seeks interdictory and declaratory relief in the notice of motion, praying:

'1. That the Board of Directors elected at the Annual General Meeting of Mosupatsela FM Stereo held on 27 July 2024 be declared the current and duly elected Board of Directors of Mosupatsela FM Stereo.

2. That the Board of Directors, of which the First, Second, Third and Fourth Respondents form part, be declared to have been dissolved in terms of the provisions of the Mosupatsela FM Stereo Constitution from September 2017.

3. That any actions taken by the First, Second, Third and Fourth Respondents during such time as they had acted as the Board of Directors of Mosupatsela FM Stereo after the date on which it was considered to be dissolved in terms of the provisions of the Mosupatsela FM Stereo Constitution [be declared] as being null and void.

4. That the First, Second, Third and Fourth Respondents be interdicted and restrained from declaring and/or presenting itself as the duly elected Board of Directors of Mosupatsela FM Stereo.

5. That the Fifth Respondent be interdicted and restrained from declaring and/or presenting and/or recognising the First, Second, Third and Fourth Respondents as the duly elected Board of Directors of Mosupatsela FM Stereo.

6. That the Fifth Respondent be directed to accept and recognise the Board of Directors declared to be the duly elected Board of Directors of Mosupatsela FM Stereo.

7. *In the alternative* to (1) to (6) above, that the Fifth Respondent be ordered to refer this matter/dispute to the Complaints and Compliance Committee of the Fifth Respondent on the papers filed in this application duly supplemented.'

The applicant also seeks cost orders against the respondents.

[4] Applications for condonation in respect of the late filing of papers by both parties served before me, and at the commencement of the proceedings, I granted such condonation and ordered that the matter proceed to have it properly ventilated. For the latter reason, I requested the parties to argue the two points *in limine* raised by the respondents, to wit the *locus standi* of the applicant and mootness of the relief claimed, together with the rest of the application.

[5] From the papers before court, holistically viewed, it is evident that the radio station has been plagued for several years by animosity and disputes between different role players who have an interest in its day-to-day business. The station is duly registered as a non-profit company. Its constitution (annexed to the founding affidavit as Annexure FA1 – the constitution) provides, amongst others, that the station shall be a community radio not for personal ownership and it shall be represented by ‘the Board of Directors in all matters not limited to legal matters or/and proceedings or/and transactions.’ The constitution regulates *inter alia* the convening of an annual general meeting (AGM), membership of the station, the election procedure of the board, the board’s composition and functions, the station’s management committee (of which the station manager is in charge with the professional management of the station, accountable to the board), board meetings and quorum, and the board’s dissolution.

[6] From the applicant’s founding affidavit it can be gleaned that the basis for the relief sought by him (relying on several clauses in the station’s constitution), is the averment that the respondents were at the time of launching this application not a functioning board of directors. As mentioned, the applicant prays that this court declares the board elected at the AGM held on 27 July 2024 (which from a reading of annexures to the founding affidavit, excludes the respondents), to be the current and duly elected board of the station, and the board of which the respondents had formed part ‘from since 2017’ be declared to have been dissolved (with subsequent declaratory and interdictory relief). The respondents, in opposing the relief claimed, aver that the current board was selected at an AGM held on 14 September 2024, subsequent to the 27 July 2024 meeting. The respondents argued that the applicant does not have legal standing to institute this application. However, in their answering affidavit it is stated that notice of the meeting of 14 September 2024 was broadcasted by the radio station ‘. . . of which the Applicant is the Station Manager. . .’ already on 20 August 2024. This is despite a letter dated 6 August 2024 attached to the applicant’s founding affidavit, wherein the applicant was informed that he had been placed on ‘precautionary suspension’ for the reasons advanced therein.

[7] In *United Watch and Diamonds (Pty) Ltd v Disa Hotels Ltd*¹ the court outlined the test for determination of the right or legal capacity of a party to sue or be sued, to wit *locus*

¹ *United Watch and Diamonds (Pty) Ltd v Disa Hotels Ltd* 1972 (4) SA 409 (C) at 415A.

standi in judicio, as follows: 'To establish that one has *locus standi* . . . that he has an interest in the subject matter of the judgment or order sufficiently direct or substantial.'² In my view the applicant indeed has a direct and substantial interest in the outcome of this application, and accordingly this point *in limine* cannot be sustained.

[8] Numerous correspondence exchanged between the parties are annexed to the papers and relied upon for their respective contentions. The respondents argue that the relief claimed by the applicant had become moot or, put differently, had been overtaken by an AGM held on 14 September 2024 where the current board (of which the first, second and fourth respondents are seemingly directors) had been duly elected in terms of the constitution, as set out in the answering affidavit.

[9] It would seem to me that, despite the respondents' averments regarding their election to what they submit to be the current board, the issues between them and the applicant are still very much alive. There can be no mootness of the relief sought, nor would relief granted by this court be of an academic nature only and serving no purpose. I say so because the applicant argued that the respondents did not answer to or grapple with some averments made by him regarding, amongst others, his precautionary suspension and the invalidity thereof. It is evident from the papers that ICASA has been extensively involved in the station's affairs, and correctly so. After all, the station's very existence is dependent on a mandatory license issued by ICASA for its operation. To this extent, extensive communication took place between the station's management and board, and ICASA's officials, more specifically, its compliance officer. From a reading of the applicant's founding affidavit, a picture is painted that seems, to me, to imply that the mentioned compliance officer either neglected, failed in or was not impartial in the execution of her duties. The applicant states that on 17 July 2024, the manager of ICASA's Broadcasting Compliance Division filed a report on a meeting held on 9 July 2024 with the purpose 'to address and resolve the conflict' between the station's management and board. The applicant is dissatisfied with the said report, averring that the manager made certain incorrect statements. It is evident that the applicant is not at

² Ibid at 415A. See also *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 661.

ease with the manner in which the mentioned representatives of ICASA dealt with the issues between management and the board.

[10] The applicant sought relief in the alternative to the declaratory and interdictory relief in prayers 1-6 of its notice of motion, with prayer 7 reading ' . . . that the Fifth Respondent be ordered to refer the matter/dispute to the Complaints and Compliance Committee of the Fifth Respondent on the papers filed in this application duly supplemented.'

[11] ICASA, as a creature of statute, is endowed with powers and duties under two principal statutes, the ICASA Act and the Electronic Communications Act 36 of 2005. The Complaints and Compliance Committee (CCC) is an independent tribunal of ICASA established in terms of the ICASA Act. It is mandated in terms of s 17B of the Act to investigate, hear submissions, deliberate on the issues in dispute and make decisions through its legislative empowerment in terms of the Act. In my view, the CCC is *par excellence* geared to deal with the disputes between the parties regarding the station's board of directors. Considering all the circumstances of this application, I deem the said alternative relief by the applicant, to be appropriate. In my discretion I deem it just that each party should be liable for its own costs.

[12] Accordingly, I make the following order:

1 The fifth respondent is ordered to refer the dispute in respect of the lawful Board of Directors of Mosupatsela FM Stereo, to its Complaints and Compliance Committee (CCC) on the papers filed in this application (duly supplemented if so elected by the parties) within ten (10) days of service of this court order,

2 Each party is ordered to pay its own costs.


REINDERS J

Appearances

On behalf of the applicant:

JJ Grundlingh

Instructed by:

Webbers Attorneys

Bloemfontein

On behalf of the first to fourth respondents:

TL Manye

Instructed by:

Phatshoane Henney Attorneys

Bloemfontein