



P.O.Box 412365 • Craighall • Tel (011) 325-5755 • Fax (011) 325-5736 • e-mail: bccsa@nabsa.co.za
No 2 Albury Park • Magalieszicht Ave • Dunkeld West • 2196 • www.bccsa.co.za

CASE NUMBER: 21/2013

DATE OF HEARING: 18 JUNE 2013

JUDGMENT RELEASE DATE: 25 JULY 2013

MOKGORO

COMPLAINANT

vs

SABC (MOTSWEDING FM)

RESPONDENT

TRIBUNAL: **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**
 DR LYNDA GILFILLAN
 MR ALAN MELVILLE
 PROF SUNETTE LÖTTER

FOR THE COMPLAINANT: The Complainant was unable to attend.

RESPONDENT: Mr Fakir Hassen, Manager: Broadcast Compliance, Policy and Regulatory Affairs, accompanied by Ms Veronica Barnard: Compliance Officer Broadcasting Compliance.

Rape – identity of minor rape victim disclosed – contravention of Code. Mokgoro vs SABC (Motsweding FM) Case: 21/2013(BCCSA)

SUMMARY

In several broadcasts, the Respondent broadcaster disclosed the identity of a raped child. It appeared that the broadcasts were made with the intention of furthering a campaign against rape.

Such broadcasts were, however, in conflict with the Broadcasting Code. Only an adult may grant permission that his or her identity be disclosed under such circumstances. A parent is not permitted to do so on behalf of or in the interests of a child, even if such a child has passed away. Such a disclosure is, in any case, not permitted by the Criminal Procedure Act, unless the presiding Judge or Magistrate has granted permission.

The Tribunal held that, although the disclosure of the identity amounted to a bona fide mistake and the broadcasts were apparently made in the public interest, the disclosure of the identity of the victim amounted to a serious contravention of the Code.

A fine of R10 000 was imposed.

JUDGMENT

JCW VAN ROOYEN SC

[1] A complaint was received regarding the disclosure by way of broadcasts of the identity of a child who had been raped. I referred the matter to a Tribunal for a hearing and a decision.

[2] **The complaint reads as follows:**

“Re: COMPLAINT ABOUT RAPE MESSAGE FLIGHTED ON MOTSWEDING FM.

A message on the painful rape of a child/youth that happened in the North West is flighted several times a day by the station. You as the listener are given a visual step by step of the rape and in the background the painful cry of the girl. The message that I am complaining about was repeated again today the 4th May 2013 at 16h50 on Motsweding FM. The girl named in the message is “X” in the North West Province.¹

I am outraged because:

1. The name and surname of the girl is mentioned in the flighting or message
2. The screams \the pain and terror that the poor girl suffered are heard in the background.
3. The emotional hurt that parents and relatives are continuously being subjected to.
4. The final straw telling the whole world that the mother was separated from the father.

The family needs closure and not be continuously reminded of the painful death of their child. If this message was meant as a scare tactic, then people should take cognisance of the family’s emotions, they should put themselves in the position that this poor family is in. There are many ways of sending a message that is designed to change people’s unwanted societal

¹ The name of the girl was mentioned in the complaint. The Tribunal, however, removed it so as to protect further identification.

behaviours. Motsweding FM should at least copy from Lesedi FM whose message is a cry for help to South Africa to stop the scourge of rape. My plea to you as the commission is to please take off the flighted message, I think enough damage and pain has been caused to the family.”

[3] **The Broadcaster responded as follows:**

“BCCSA COMPLAINT: THERESA MOKGORO - MOTSWEDING FM - RAPE MESSAGE- ALLEGED INCITEMENT OF VIOLENCE - 04.05.13; 16:50

Our comments are as follows:

1. North West Province, which is the core audience base of Motsweding FM, has a high rate of rape of women, children and the elderly. Motsweding FM has made an undertaking to become a Goodwill Ambassador against rape of women and children, a campaign that is led by SAPS North West, the office of the Premier and the MEC for Human Settlement, Public Safety and Liaison.
2. The Goodwill Ambassador campaign has been given authority by Ofentse Mogale’s family to use her name, profile and pictures and her family profile as the face of the campaign. The Station further got permission from the campaign drivers, SAPS, and the Mogale Family, to tell Ofentse’s story throughout the campaign because the family does not want any other child and family to go through what they and Ofentse went through.
3. The promo in question using the name of Ofentse Mogale and her family profile was a deliberate call for action that was aimed to challenge the community and individuals to do something about the scourge of rape.
4. The promo was intended to hit home and describe the “reality” of the current situation on the ground. The promo was a dramatization, so sound effects were used. The voice used on the promo is NOT that of Ofentse Mogale.
5. The key intent of the promo was to get audiences to begin to take action and not ignore any child’s scream or call for help in society. This was a call to action and the SAPS signed off on the promo as the lead campaign organizer.

We submit that there has been no transgression of the Code.”

EVALUATION

[4] **Clause 11(7) of the Broadcasting Code provides as follows:**

- (7) The identity of rape victims and other victims of sexual violence must not be divulged in any broadcast, whether as part of news or not, without the prior valid consent of the victim concerned.

Once the SABC was made aware of the above provision, it immediately took steps to cancel further broadcasts.

- [5] The matter becomes even more problematic when the provisions of section 154(2) of the Criminal Procedure Act 1977 are taken into consideration. It may be accepted that

the prosecution took place in camera, and that in such a case the said provision makes it an offence to disclose the identity of such a victim without the authorisation of the presiding Judge or Magistrate. The Code indeed provides that a rape victim may give permission that his or her identity be disclosed. This may obviously only take place in cases where the matter had not been heard in camera. Nevertheless, in all such cases the presiding Judge or Magistrate must grant permission. There is no provision in the Code that a parent, or anyone else, may grant permission for the disclosure of the identity of a raped child.

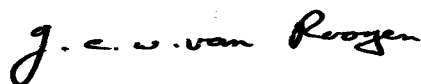
[6] Although the mistake was a bona fide mistake and the broadcasts were apparently in the public interest, the disclosure of the identity of the victim amounted to a serious contravention of the Code.

[7] **As to possible sanction the SABC argued as follows:**

1. There was no deliberate intent on the part of the station or the SABC to flout any legislation or regulations.
2. The campaign had the support of the family of the raped and murdered child as well as provincial authorities, including the office of the Premier and the SAPS.
3. Given this level of support, the campaign was done in good faith with the primary objective of raising awareness around rape and child abuse.
4. When it was drawn to our attention that using the child's details was not permissible, the station withdrew the campaign with immediate effect.

[8] Although one has respect for the positive aims of the campaign and that the organizers and the SABC were bona fide, it is important that a message be sent out that such a campaign, which identified the minor who was raped, is not permitted by law and this Code. The maximum fine is R60 000 – a fine which would be inappropriate in this case. We have, accordingly, decided to impose a R10 000 fine.

In the result the complaint is upheld and a fine of R10 000 is imposed.



JCW VAN ROOYEN SC
CHAIRPERSON

Commissioners Gilfillan, Melville and Lötter concurred with the judgment of the Chairperson.