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: 50/2012

DATE OF HEARING: 11 OCTOBER 2012
JUDGMENT RELEASE DATE: 07 NOVEMBER 2012

GREEFF **COMPLAINANT**

vs

JACARANDA 94.2 FM **RESPONDENT**

TRIBUNAL: **PROF JCW VAN ROOYEN SC (CHAIRPERSON)**
PROF V BRONSTEIN
MS G HARPER
ADV R SEWLAL
MR E LININGTON (CO-OPTED)

Complainant: The Complainant in person.

For the Respondent: Mr JD Crawford, Legal Representative accompanied by Mr Neil Johnson: Jacaranda Programme Manager.

Defamation – remarks on radio unjustifiably creating a suspicion that a person has criminal tendencies – held to be defamatory. Greeff vs Jacaranda 94.2 FM, Case No: 50/2012(BCTSA).

SUMMARY

The Tribunal held that remarks which were made by a radio presenter implied that the complainant is a person not to be trusted in the light of his having killed a dog. The radio presenter's remarks were based on a report in a newspaper. The report

made it clear that the complainant's defence would be that he had acted in defence of his dogs. The Tribunal held that the remarks amounted to defamation and upheld the complaint. A fine of R25000 was imposed on the respondent radio station in the light of the seriousness of the implications of what was broadcast.

JUDGMENT

JCW VAN ROOYEN SC

[1] A complaint was received and entertained by the Registrar regarding a broadcast by Jacaranda 94.2 on the 12th September 2012. I referred the matter to a Tribunal.

[2] The complaint reads as follows:

> "I am an attorney and was involved in a incident on 12 September 2012 in which I acted in self defence by stabbing a Rhodesian Ridgeback dog which together with another Rhodesian Ridgeback dog attacked myself and my two small dogs (a Yorkshire terrier mix and a 6 month old Wirehaired foxterrier).
>
> The abovementioned incident was subsequently reported in the Beeld Newspaper on 14 September 2012.
>
> On 14 September 2012 at plus minus 5:30 Mr Kruse (a presenter) referred to the article which has been published in the Beeld Newspaper.
>
> Subsequently to referring to the article in the Beeld newspaper Mr Kruse made the following comment: *"Ek sal maar pasop vir daardie Francois Greeff as ek met my Beagle hond stap, hy sal sommer my Beagle met a mes steek."*
>
> Mr Kruse made several other remarks, which created the impression that I am cruel towards animals and that I roam around the streets of Pretoria randomly attacking dogs.
>
> The broadcast by Mr Kruse several times identified me personally (Francois Greeff, prokureur van Pretoria) and his remarks were an attack on my dignity and my reputation as an attorney of the High Court of South Africa in that it creates the impression as a person who is cruel towards animals and that I am a criminal.
>
> Had Mr Kruse contacted me prior to the broadcast I would have informed him of the following:
>
> - That I acted in self defence and that my actions at the time of the incident was reasonable and just;
> - That we (myself and two small dogs) were attacked from behind by the 2 Rhodesian Ridgback dogs;
> - That my version of the incident is corroborated by the CCTV footage of the incident, which would/could have been made available to him had he requested me to do.

After the offensive broadcast by Mr Kruse I was contacted by various persons who, based on Mr Kruse' broadcast, were under the mistaken belief that I randomly attacked the Rhodesian Ridgeback dogs.

My right to privacy, dignity and my reputation was infringed by the unfounded and untrue remarks made by Mr Kruse and I hereby request the BCCSA to investigae his conduct."

[3] The radio station responded as follows:

1. In terms of paragraph 12 of the BCCSA Code:

   - *"Broadcasting service licensees are entitled to broadcast comment on and criticism of any actions or events of public importance.*

   - *The comment must be an honest expression of opinion and must be presented in such a manner that it appears clearly to be comment and must be made on facts truly staged or fairly indicated and referred to.*

   - *Where a person has stated that he or she is not available for comment or such a person could not reasonably be reached, it must be stated in the program."*

2. The presenter expressed an honest opinion. It was clearly a comment and was largely tongue in cheek. He said that the perpetrator, Greeff, would easily stab his small Beagle, clearly in reference to the size of the Rhodesian Ridgeback that the perpetrator did in fact stab.

   2.1. The presenter also commented that the incident took place in a security complex which begs the question why the perpetrator was carrying a knife in the first place in a security complex.

   2.2. It is a reasonable opinion that the incident could recur.

   2.3. The presenter in essence said that people walking dogs ought to give the complainant a wide birth because the complainant "*mag dalk*" (might just) stab your dog. The presenter does not say it will happen, but that there is a risk.

3. In terms of Clause 15 of the Code, dignity must be considered "*bearing in mind that the said rights may be overridden by legitimate public interest*".

   3.1. This is such a case.

   3.2. The public is interested in matters involving domestic pets and the fact that the incident took place between a twelve year old child and an adult.

   3.3. In the circumstances the dignity of the complainant, if it was infringed at all, which is denied, was not infringed in any greater a manner than had already been achieved by the sensationalist headlines published by Beeld and the newspaper stories associated therewith.

4. According to the complainant the presenter said – "*Ek sal maar pasop vir daardie Francois Greeff as ek met my Beagle hond stap, hy sal sommer my Beagle met 'n mes steek".* As indicated above, the presenter was making a comparison between

his small dog and the larger dog that was stabbed according to the actual news story."

[4] The Complainant replied as follows:

"In order to simplify matters kindly note that I am willing to withdraw the complaint against Mr Kruse / Jacaranda FM **and** once again unconditionally waive all my rights to take civil and/or criminal action against Mr Kruse / Jacaranda FM in respect of the relevant broadcast of 14 September 2012 on the following conditions:

- Mr Kruse furnish me with a sworn affidavit in which it is stated that he was under the impression that the article appearing in the Beeld newspaper to be an accurate depiction of the event that took place on 12 September 2012 and furthermore that he was under the impression that the reporting in the Beeld newspaper was fair and objective;
- Jacaranda FM furnishes me with a copy, in digital format, of the relevant broadcast by Mr Kruse;

Kindly notify me accordingly if Jacaranda FM is willing to accept my offer, where after I will draft an affidavit for their consideration and the eventual signing thereof by Mr Kruse.

I confirm that I will, if Mr Kruse / Jacaranda FM is not willing to settle the matter on the basis as set out above, attend the meeting at the BCCSA/NAB Boardroom on 11 October 2012."

EVALUATION

[5] Since affidavits may only be requested by the Chairman of the BCCSA, I turned down the request for an affidavit and the matter continued before the Tribunal, as constituted by me.

[6] The radio presenter, Mr Kruse, based his comments on an article that had appeared in the Afrikaans newspaper, *Beeld*, which had been published that same morning. The article reads as follows:

'Prokureur steek hond dood'

Gerhard Pretorius

'n Prokureur het glo op straat verby 'n 12-jarige seun geleun om die kind se hond met 'n mes dood te steek.

Die mes het die longe van Simson, Aiden Viljoen se rifrug, deurboor. Hy is skaars 'n uur later in 'n veearts se spreekkamer dood weens die bloed in sy longe.

Aiden en 'n maat het eergister omstreeks 16:00 met sy twee honde, Simson en Kiara, in 'n veiligheidskompleks in Moreletapark, Pretoria, gestap.

Die prokureur, Francois Greeff, het ook met sy twee honde in die kompleks gestap.

"Ek het albei honde se leibande in my hand gehad en toe het 'n man van voor af gekom met sy twee honde," het Aiden vertel.

"My honde is sterk en het my getrek, want hulle wou na die ander honde toe gaaan."

"Die honde het 'n bietjie vir mekaar gegrom en die leibande het deurmekaar geraak, maar hulle het mekaar nie eens een keer gebyt nie."

Volgens Aiden het Greeff 'n tree of wat teruggestaan en toe oor hom gebuk en 'n mes 'roekeloos' rondgeswaai.

"Hy het Simson gesny en Kiara ook op die oor gesny."

"Hy het toe teruggestaan en ek het hom gevra: 'Het jy nou net my hond gesny?' en hy het 'ja' gesê."

"Toe ek hom vra: 'Gaan jy nie verskoning vra nie?' het hy 'nee' gesê en net weggeloop."

"Simson het teen my kom lê en toe ek afkyk, het sy bloed teen sy been afgeloop."

"My hond het dit nie verdien nie."

"Toe ons by die huis kom, het my tannie Simson na 'n veearts toe gevat," het Aiden gesê."

Daar was 'n steekwond aan die hond se sy wat glo sy dood veroorsaak het.

Aiden het vertel sy oupa Willie, wat verlede jaar dood is, het rifrughonde geteel en Simson vir hom gegee.

Aiden het sy pa mooi gevra of hulle Simson kan veras en sy as by dié van sy oupa in die gedenkmuur by die Voortrekkermonument kan gaan plaas.

Sy pa, Walter, het Greef gaan konfronteer.

Greeff het glo aan Walter Viljoen geê hy het 'n mes by hom om hom te verdedig en in dié geval moes hy hom en sy honde verdedig.

Greeff het gister aan Beeld gesê die polisie het hom gister om 15:00 op aanklag van opsetlike saakbeskadiging gearresteer, maar op waarskuwing vrygelaat. Hy het gesê hy wil nie sy saak in die media bespreek nie, maar ontken dat hy iets verkeerds gedoen het. Greeff sal in oktober in die hof verskyn."

[7] The first defence of the radio station is that the matter was in the public interest and that the Complainant's claim that his dignity and reputation were impaired was overriden by public interest. The public interest defence does not mean "that which

is 'interesting' to the public".[1] For that defence to succeed, it would first of all have to appear from the facts, judged as a whole, that what was published was true. There is no factual basis for the introduction of this defence. The comment by the presenter clearly insinuates that the Complainant is a criminal or is, at least, inclined to act in a criminal manner against any dog, whatever the circumstances. The Complainant informed the Tribunal that he had acted to defend his dogs against an attack by the dog which he had then killed. The article in *Beeld*, upon which the presenter had based his comments, also clearly stated that, although the Complainant did not wish to argue his case in the media, he had not done anything wrong: he had merely acted in defence of his dogs. This is a defence which could possibly succeed. Even if the Complainant did indeed go too far in his action of killing the dog, he nevertheless has the defence of absence of knowlege of unlawfulness, upon which the Court would have to decide.

[8] There is nothing in the *Beeld* article that justifies the presenter's statement that he would, in future, take care to stay out of the reach of the Complainant when he takes his dogs for a walk. The implication is clear – the Complainant is nothing other than a "prowling" criminal who is inclined to attack dogs.

[9] I have no doubt that the presenter has defamed the Complainant. To argue that it was done tongue-in-cheek is no defence in the circumstances. To imply that a person has criminal tendencies is, to say the least, gross. Even if the Complainant were to be found guilty of damage to property (this would only be possible if the State is able to prove that he had foreseen that he had intentionally overstepped the rules of defence of property, or that, while foreseeing the possibility that he was overstepping such rules, he nevertheless proceeded to do so) this would not justify the inference that he is inclined to kill dogs.

[10] As to the complaint that his dignity was impaired, I will accept in favour of the radio station that it would be unfair to find that the dignity of the Complainant was

[1] *Financial Mail (Pty) Ltd v Sage Holdings Ltd 1993 (2) SA 451 (A)*

also impaired. Although the right to dignity relates to the personal feelings of the Complainant, while reputation is based on what third parties might reasonably have thought about the Complainant after having heard the broadcast, these two interests are too closely related within the ambit of this case to make a finding under both heads. This would amount to a splitting of charges, which would be unfair in the circumstances. Accordingly, the finding is that the Broadcasting Code was contravened in that the broadcast impugned the reputation of the Complainant.

[11] Argument from the parties as to a possible sanction or sanctions were filed with the Registrar. The Constitution provides as follows in regard to possible sanctions:

> Following any investigation of an alleged infringement of the Code by a signatory, an Adjudicator or, as the case may be, a Tribunal may
>
> 14.1 dismiss the complaint;
>
> 14.2 reprimand any respondent adjudged to have been guilty of an infringement of the Code;
>
> 14.3 direct that a correction and/or a summary of the findings of an Adjudicator or Tribunal be broadcast by the respondent in such manner as may be determined by an Adjudicator or Tribunal;
>
> 14.4 direct that a respondent grant reasonable access in its broadcasts on an equal opportunity basis to a political party, organisation or movement or candidate in a case where the Code was not complied with and the BCCSA has jurisdiction to hear the matter in terms of its recognition in terms of section 56(2) of the IBA Act 1993 or where any applicable legislation does not provide for jurisdiction of the BMCC of the ICASA. The same rule shall *mutatis mutandis* apply in the case where the sanction of the Tribunal or an adjudicator is that a broadcaster must afford a complainant a right to reply.
>
> 14.5 impose a fine not exceeding R60,000 on any respondent adjudged to have infringed the Code, whereupon the fine so imposed shall be a debt due to the BCCSA and recoverable as such;

[12] The Complainant's argument on sanction reads as follows:

> "1. I would in the onset like to say that I do not have sufficient knowledge of this specific branch of the law to enable me to make sensible suggestions as to a proper sanction in the circumstances.
>
> 2. I nevertheless, despite the content of paragraph 1 above, wish to make the following general submissions:

2.1 Mr Johnson made a statement at the hearing which left me with the distinct impression that the statements by the radio presenter did not form part of the planned programme material. My personal feeling is that it would be, despite the doctrine of vicarious liability, unfair to hold Jacaranda FM responsible for impulsive statements made by one of their radio presenters. The aforesaid is however on the express provision that the transgression of the presenter is an isolated incident and that the radio presenter is not a habitual wrongdoer, in which case Jacaranda FM should be held accountable for the radio presenter's conduct.

2.2 I'm not seeking retribution against Jacaranda FM / Mr Kruse and my opinion is that a mere reprimand would suffice in the circumstances, provided that it is coupled with a ruling that this judgment would be taken into consideration should the radio presenter transgress the Broadcasting Code in a similar manner in future.

3. I nevertheless trust that the Commission will decide on an appropriate sanction and I will abide by the decision of the commission."

[13] The broadcaster's argument on sanction reads as follows:

The Complainant states in the *Beeld* that "*Greeff het gesê hy het `n mes by hom om hom te verdedig en in die geval moes hy hom en die hond verdedig"* and

"Hy ontken dat hy iets verkeerds gedoen het".

At the hearing the complainant made it clear that he would have been satisfied if the Presenter had included this aspect of the report in his broadcast.

In the circumstances the Broadcaster submits that it fulfil the wishes of the Complainant as follows;

1. That a summary of the finding be broadcast as follows: "the BCCSA has found that the Broadcaster unjustifiably created a suspicion that Greeff has criminal tendencies. Jacaranda apologises for this and confirms that the report on which the presenter relied indeed recorded that Greeff denied having done anything wrong and that he had acted in defence of himself and his dogs and that the presenter failed to record this fact".

2. The Broadcaster submits that no fine would be appropriate as the Complainant has waived the right to institute civil proceedings and monetary consequences are of no relevance and cannot be quantified. We await your response."

[14] In so far as sanction is concerned, a broadcaster is held vicariously responsible for the acts and ommissions of its presenters during a broadcast, where such acts or omissions amount to contraventions of the Broadcasting Code. It is irrelevant whether this rule would seem unfair: it is simply a rule of law which has often, over many years, been applied by our Courts and this Commission. We do not

believe that an apology/correction would be sufficient to address the harm done. Defamation is a serious contravention of the Broadcasting Code and, in this case, where criminal tendencies were unduly attributed to the Complainant, we repeat that we regard this as gross. During this year the Respondent station was fined R30 000 for injuring the dignity of the children of the New Hope School[2] and was ordered, in another case, to apologize to the matriculants of the BCVO schools for having defamed them in so far as their results were concerned.[3] In another matter, the station was, however, found to have not contravened the relevant clause, since, in the view of the Tribunal a seemingly derogatory statement served to debunk the stereotype that violence was typical only of the area concerned.[4] In a matter where 94,7 Highveld Stereo and Talk Radio 702 were involved, the stations were fined R25000 each for having created the impression that a person is a suspect in a murder which had taken place several years ago. No new evidence was available.[5] We have, accordingly, decided that there is no reason to not impose the same fine in the present matter.

The complaint is, accordingly, upheld and the respondent station is fined R25000, which amount plus VAT must be paid to the Registrar of the Commission on or before 30 November 2012.

PROF KOBUS VAN ROOYEN SC
CHAIRPERSON

Commissioners Bronstein, Harper, Sewlal and Linington concurred with the judgment of the Chairperson.

---

[2] *PACSEN & Several Others vs Jacaranda 94.2 FM, Case No: 05/2012*
[3] *BCVO & Geldenhuys vs Jacaranda 94.2 FM ,Case No: 02/2012*
[4] *Botha and Hoërskool Alberton vs Jacaranda 94.2 FM, Case No: 25/2012*
[5] *Naicker vs 94.7 Highveld Stereo & Talk Radio 702; Case No: 26/2012*