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CASE NUMBER: 57/2012

In the matter between

Jacaranda 94.2 FM **APPLICANT**

and

Greeff **RESPONDENT**

Application for condonation for late filing of application for leave to appeal. Complainant and Respondent entitled to certainty as to judgment of BCCSA. Strict compliance required except where special circumstances are shown. Such circumstances not present.
Jacaranda vs Greeff, Case No:57/2012 (BCCSA)

JUDGMENT

JCW VAN ROOYEN SC

[1] On the 7th November 2012 I handed down a judgment of the BCCSA Tribunal in regard to a complaint which was lodged with the Registrar of the Commission against Jacaranda 94.2FM, a broadcaster which falls under the jurisdiction of the BCCSA in terms of section 54(3) of the Electronic Communications Act 2005. 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. The Respondent was fined R25000 in the light of the seriousness of the implications of what was broadcast.

[2] On the 26th November the Registrar received the application for condonation for late filing of the leave to appeal from the broadcaster.

"SUBJECT: CONDONATION: GREEFF VS JACARANDA FM

As per our discussion on Friday 17th November that we were late with our appeal application of the above case before the BCCSA tribunal, can we apply to the chairperson for condonation? The reasons for this were that I was under the impression that we had seven days to apply. Also this is our busiest period of the year and the station is moving to new premises so I have been under immense pressure on all fronts.

This is the first occasion that we have missed a deadline and in this case would like to be heard by the BCCSA appeals committee. Would this be possible?"

[3] Procedural Rule 4.1 of the Code states the following:

Appeal to Appeal Tribunal

4.1 If any of the parties to a matter which has been decided upon by the Tribunal is aggrieved by the decision, that party may, within 5 days, apply to the Chairperson of the Tribunal in writing for leave to appeal to an Appeal Tribunal of the Commission.

[4] The five day period is determined by excluding the first day on which the judgment was handed down and then adding five days. On the fifth day the application for leave to appeal with the grounds must be received.

[5] The question before me at this stage is whether a sufficient case has been made out to extend the five day period for the filing of an appeal so as to condone the late filing of the application in terms of clause 5 of the Procedural Rules of the BCCSA.

Clause 5.1 provides as follows:

"The Chairperson of the BCCSA may, if satisfied that no injustice will result, and upon such conditions as he or she may impose:

5.1 extend any time period contemplated in these rules;"

[6] The Procedural Rules of the BCCSA must be read within the context of the following aim of the BCCSA, as set out in its Constitution:

"The objects of the BCCSA are to ensure the adherence to high standards in broadcasting and to achieve a *speedy* and cost effective settlement of complaints against full members of NAB who have submitted themselves to the jurisdiction of the BCCSA and its Code and, where a settlement cannot be attained, to adjudicate upon a complaint and take appropriate steps in accordance with clause 14 of this Constitution." (emphasis added)

The Preamble to the Procedural Rules reads as follows:

"That complaints be considered and adjudicated upon within the *shortest* possible time after the broadcast of the matter giving rise to the complaint; that complaints be considered and adjudicated upon in an informal manner; and that whenever possible the adjudicator, Tribunal and Appeal Tribunal and the parties will strive for a speedy and amicable settlement." (emphasis added)

The five days within which an application for leave to appeal must be filed, should thus be read against the background of these aims.

[7] Given the necessity for the speedy adjudication and finalization of complaints, I do not believe that a case has been made out on the basis that "no injustice will result". The complainants and broadcasters before the BCCSA are entitled to have matters finalized as speedily as possible. This is well illustrated in the *Mahamed* matter, where even a Complainant, who would generally not be as conversant with the Rules as a Broadcaster, was not successful in his application for condonation.[1] Also see *e.tv v IFP*.[2] As to the meaning of the words "no injustice will result" compare the condonation judgment in *F v SABC* [3]and *94.7 Highveld Stereo vs Stevens.*[4]

The application for extension of the five day period is accordingly dismissed.

J. C. W. van Rooyen

JCW VAN ROOYEN SC
CHAIRPERSON

[1] Case No: 27(2)/2011;[2011] JOL 27571 (BCCSA)
[2] Case No: 24/2011; [2011] JOL 28440 (BCCSA).
[3] (Case No:24/2008); [2009] JOL 22981) (BCCSA).
[4] Case No: 37/2012: [2012] JOL 29038 (BCCSA)