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CASE NUMBER: 06/2015

DATE OF HEARING: 14 APRIL 2015
JUDGMENT RELEASE DATE: 4 MAY 2015

NAIDOO **COMPLAINANT**

vs

SABC3 **RESPONDENT**

TRIBUNAL: **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**
MS GIUSEPPINA HARPER
MR BRIAN MAKEKETA (DEPUTY CHAIRPERSON)
DR N MAKAULA- NTSEBEZA
MS ZALI MBOMBO
MR ALAN MELVILLE

THE COMPLAINANTS: The Complainant in person.

RESPONDENT: Mr Fakir Hassen, Manager: Broadcasting Compliance, Regulatory Affairs SABC, accompanied by Mr Nyiko Shibambo: Compliance Officer, Broadcasting Compliance SABC.

Religion – film not constituting hate speech based on religion – thus permissible to be broadcast– Naidoo vs SABC3 – Case: 06/2015(BCCSA)

SUMMARY

A film contained a scene where a young lady, in a dream, saw Jesus coming off the Cross and making sexual suggestions to her. Scene saved by the fact that it did not amount to hate speech based on religion. Complaint not upheld

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JUDGMENT

JCW VAN ROOYEN SC

[1] A complaint was received regarding a film in which Jesus, who is central to Christian teaching and faith, is said to have been denigrated. I referred the matter to a Tribunal for a hearing.

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

"RE: programme : californication. 10 march 2015. sabc 3. 9:30pm -10:30pm

I would like to lodge a complaint regarding the above programme. It depicted a scene (where the lady was dreaming) but visibly showing that Jesus was on the cross crucified, and then got off the cross, hugging the young lady and stating Jesus loves you, albeit in a sexual manner, since he wants to kiss the young lady.

This is unnaceptable, since the idea is to connote that Jesus wants to have a sexual relationship with the young lady, whether a dream state or not. This can be defined as being blasphemy.

Artistic licence is one thing but blasphemy something else. In my view the Broadcaster has crossed the line, and according to our constitution this is not acceptable. I humbly request that you render a decision on this matter."

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

1. "The episode in question, which was shown in the watershed period, had an audio advisory and 18LNP on screen at the start of the programme and after each ad break.

2. The scene complained about was a dream sequence in which a girl has a dream that she goes to church in her skimpy school girl outfit. She kneels before a giant cross of Jesus to pray, and as a result Jesus comes alive. He pops out his nails, comes down from the cross and starts behaving passionately with her when she wakes up, quite startled by her dream.

3. We submit that the scene was within the ambit of the series that is known to include a number of unconventional sex scenes in dramatic form, such as this dream sequence.

4. The presence of the appropriate advisories allowed viewers the option of tuning out if they would be offended by scenes of sex, language or prejudicial scenes of a religious nature, as in this instance.

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

EVALUATION

[4] At Common Law, blasphemy, in short, means to denigrate God, Jesus or the Holy Spirit. In 1936 the Appellate Division[1] held an article to be blasphemous where it described the fictional longing of a nun, in a dream, to have sex with Jesus. This was held to amount to blasphemy. In 1989 the Publications Appeal Board, held that the film, *The Last Temptation of Christ*, was offensive to the religious convictions or feelings of Christians, insofar as the longing of Jesus on the Cross, being the "last temptation", was to have been married and having sex. The Board did not pronounce as to whether the film was also blasphemous. The Appeal Tribunal of the BCCSA[2] in 2007 held that the broadcast of the film after 23:00 by etv, did not amount to a contravention of the Broadcasting Code, since the film, ultimately, demonstrated that Jesus had also not given in to this last temptation.

[5] Firstly we should state that in terms of section 39 of the Constitution of the Republic the Common law must be adapted so as to bring it into conformity with the Bill of Rights. Blasphemy, in its original wide form, must, accordingly be adapted. Section 16 of the Constitution of the Republic of South Africa 1996, in short, guarantees freedom of expression. One of the limitations is that the advocacy of hatred based on religion that constitutes incitement to harm would not be accommodated by the fundamental right.The protection of religious rights are, accordingly, dependent on the hate speech clause in so far as the film under consideration is concerned. Section 16, however, also guarantees the right to artistic expression. In fact, the Constitutional Court in De *Reuck v Director of Public Prosecutions and* Others[3] even allows substantial aesthetical expression to counter what would, in the normal course, be regarded as child pornography. Of course, art would include dramatic expression.

[6] The film under consideration does not, in reality, bring Jesus down from the Cross. It only happens in the, confused, young lady's dream. It is clear that the film amounts to drama and that saves the scene. In any case, the scene does not, in any manner, amount to the advocacy of hatred based on religion that constitutes incitement to

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[1] *R v Webb*1934 AD 493.
[2] Case 27/2007, e.tv vs Stanley.
[3] 2004(1) SA 494(CC).

harm. Many Christians are likely to have been shocked by the scene. But that is not the test. Furthermore the film carried an age restriction and advisory of 18LNP.[4]

In the result the complaint is not upheld.

JCW VAN ROOYEN SC
CHAIRPERSON
30 April 2015

Commissioners Harper, Makeketa, Makaula-Ntsebeza, Mbombo and Melville concurred with the judgment of the Chairperson.

[4] The "P" is not part of the advisory letters prescribed by the Broadcasting Code. The SABC, however, employs "P" to indicate "prejudice".Such prejudice could result from material which offends Christian sensibilities as in the present matter.