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CASE NUMBER: 46/2013

DATE OF HEARING: 02 DECEMBER 2013
JUDGMENT RELEASE DATE: 13 JANUARY 2014

HALLOWES OBO
KUDUMBA INVESTMENTS LDA.

COMPLAINANT

vs

eNCA

RESPONDENT

TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
MS GIUSEPPINA HARPER
PROF SUNETTE LÖTTER (ACTING COMMISSIONER)

THE COMPLAINANT WAS UNABLE TO ATTEND.

FOR THE RESPONDENT: MR MARK ROSIN: GENERAL COUNSEL AND HEAD OF BUSINESS AFFAIRS for e.tv, ACCOMPANIED BY MR BEN SAID: GROUP NEWS EDITOR for eNCA, MR OLEFILE TSHWEU: REGULATORY AFFAIRS EXECUTIVE for e.tv, MR MORAPEDI PILANE: ASSISTANT COMPLIANCE OFFICER for e.tv and MR NICOLAUS BAUER: REPORTER for eNCA.

News – mistakes conceded – addition of material relating to present situation acting as a corrective, however. Hallows obo Kudumba Investments Lda. vs eNCSA, Case: 46/2013(BCCSA)

SUMMARY

Errors had been made in a news bulletin in which it was stated: “Since April, Renamo – now the country's main opposition party – has carried out attacks on civilian, police, army and infrastructure targets *across the country.*” To illustrate the violence, archive

material was broadcast without identifying it as such. The Respondent also conceded that it was a mistake to have stated that the attacks took place “across the country”.

The Complainant argued that these errors had caused many South Africans to cancel their bookings for the holiday season.

The Tribunal stated that the newsroom would be well advised to double-check, in future, whether material broadcast is archive material or not; if this kind of error is repeated, the Tribunal will be obliged to consider finding against the Respondent.

Ultimately, the Tribunal held that the following information saved the bulletin from a finding against the Respondent: “With Frelimo forces pinning back Renamo to the Gorongosa mountains in the centre of Mozambique ... Far away from tourist hubs on the coast.” This limited the situation to the mountains and, in effect, acted as a corrective to the error that had been made earlier in the bulletin.

The complaint was not upheld.

JUDGMENT

JCW VAN ROOYEN SC

[1] A complaint was received from

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

“At 06h00 this morning ENCA ran an article on their news channel with regards to the unrest in Mozambique.

I have two issues with this that I would like to raise, other than the bad level of journalism.

- The article stated that Renamo had been attacking civilian and military targets throughout Mozambique when this is clearly not true. All the incidents, and there are very few, are restricted to Sofala Province and Nampula province. This is sensationalistic journalism at its worse and extremely damaging to the Mozambican Tourism industry.
- Secondly, the timing of the voice over mentioning “Mozambican unrest” while showing the file footage of a riot that happened more than three years ago is misleading at best.

Please could you assist in getting this reported correctly.

Mozambique relies heavily on tourism and especially the December Holidays where upwards of 100 000 people pack the beaches of this beautiful country.

This type of Journalism will do untold damage. Just check social media and the wave of cancelations over this article alone.”

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

“Complaints re: eNCA “News”

eNCA has been asked to respond to a complaint by a member of the public regarding a story it ran on attacks on Mozambique and fears for the tourist industry.

eNCA has been asked to respond in terms of clause 28 of the Subscription Code.

It reads:

28.1 News

28.1.1 Licensees must report news truthfully, accurately and fairly.

28.1.2 News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by –

28.1.2.1 distortion, exaggeration or misrepresentation;

28.1.2.2 material omissions; or

28.1.2.3 summarisation.

28.1.3 Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with due regard to context and importance. If a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it must be presented in such manner as to indicate clearly that such is the case.

28.1.4 If there is reason to doubt the correctness of the report and it is practicable to verify the correctness thereof, it must be verified. If such verification is not practicable, that fact must be mentioned in the report.

28.1.5 If it subsequently appears that a broadcast report was incorrect in a material respect, it must be immediately rectified and without reservation. The rectification must be presented with such a degree of prominence and timing as in the circumstances may be adequate and fair so as to readily attract attention.

The eNCA report on Mozambique reads as follows:

((MOZAMBIQUE_05_AM))

Mozambique has long been a popular holiday destination for many South Africans during the festive season.

But this may change this year, as our neighbour is suffering its worst political violence since its 16-year civil war ended in 1992.

Does this mean people will have to change their travel plans?

eNCA's Nickolaus Bauer reports.

(PAUSE)

((DUR:

IN: To many Mozambique...

OUT: ...SOQ.

SUPER@JOHANNESBURG

SUPER@NICKOLAUS BAUER, Reporting

**To many Mozambique is best known for pristine beaches and idyllic holidays...
But it hasn't always been like this.**

Decades of civil war ravaged the country as political foes Frelimo and Renamo fought for control...

That was until a peace deal was signed in 1992 and elections were held in 1994 – with Frelimo emerging victorious.

Now after nearly twenty years of relative peace, conflict has reared its ugly head again.

Since April, Renamo - now the country's main opposition party - has carried out attacks on civilian, police, army and infrastructure targets across the country.

They are demanding that the ruling Frelimo party reform the electoral system and stop the abuse of state resources ahead of elections next year.

ROLLS GRAPHIC

The violence is now mostly confined to several hundred kilometres north of the capital Maputo ...

With Frelimo forces pinning back Renamo to the Gorongosa mountains in the centre of Mozambique... Far away from tourist hubs on the coast.

And the strategy appears to be working.

SUPER@JANEEN VERMUELEN, MOZAMBIQUE TOUR OPERATOR

“I can't tell you how many people it has deterred from going. As far as we know it hasn't affected our business at all – I haven't had one cancellation and there's no impact.”

But despite the assurances from tour operators, the government is leaving nothing to chance.

And has urged all South Africans travelling to Mozambique to register with the Department of International Relations.

So that speedy assistance can be rendered in case of an emergency.

Dirco has also encouraged all travellers to consider developments in their particular holiday destination area. SOQ))

The complaint centres on two main points:

That eNCA erred in showing file footage from several years ago, creating the impression that the visuals were from recent unrest.

That eNCA, by using the words, “countrywide”, eNCA created the impression that Renamo attacks were occurring in all parts of the country.

eNCA admits that the reporter erred in these two instances.

eNCA concedes that the visuals should have had an “archive” or “file” tag attached to them to ensure that viewers were not misled.

eNCA also agrees that the use of the word “countrywide” was wrong.

The reporter in question, Nickolaus Bauer has been spoken to and admits that this was an oversight but not maliciously done.

However, eNCA does not agree that the report or follow-up reports would have created the wrong impression about the situation in Mozambique to a fair and reasonable person.

The wrong footage shown was on screen for no more than three seconds and the word, “countrywide” was mitigated later in the story.

We submit that there is no contravention of the code.”

[4] **The Complainant commented as follows:**

“I am sorry but this is not acceptable to me. They have done serious damage and need to undo what they have done or at least correct it.

December holiday season is the most important for Mozambican tourist industry. The cancellations pertaining to that article alone are many.

Should this need to go to court then names and addresses of people who have cancelled after seeing this article on the Main news will be forthcoming.

This is not why I complained and a simple “Sorry we should not have” does not cut the grade. This sensationalism is spreading in many facets of journalism in South Africa but the one in question is what is bothering me the most.

There are latterly hundreds are people that will go hungry from this. It is that simple. They need to make right. Their “its not so bad as it was three seconds” attitude has dire consequences for people and families.

I want them to run a correction in the same time frame as the original article or I will seek legal advice. Please advise.”

[5] **The Respondent and the *Complainant* commented as follows:**

“Please see the following response in bold from eNCA and the Complainant’s response in *italics*.

As eNCA we have taken action over this matter, as disclosed to the BCCSA.

Secondly, we do not believe that the news report on balance gives an inaccurate view of the situation in Mozambique and that, despite the error, it is clear on balance from the piece that the fighting has taken place away from the main tourist areas. This was explicitly stated in the piece. Therefore as eNCA we do not believe that this story did damage to the Mozambique tourist industry.

[Nigel Hallows comments] *In the original piece there was no distinction between the “tourist areas” and the areas where skirmishes have taken place. That was part of the original complaint.*

The complainant again, gives absolutely no facts to back up his claim that there have been mass cancellations because of this story.

[Nigel Hallows comments] *The cancellations are real and as said in my letter, should you require a list of names and contact numbers of people who saw the article and cancelled their holidays based on the information, that I would gladly get them for you. I have yet to have anyone ask me for this list. I also mentioned that one look at the comments on our face book page the day the story was aired will give you a good idea of what people were thinking.*

Additionally, the soundbyte from the tour operator in the story directly contradicts the complainant.

[Nigel Hallows comments] *[A 15 sec sound bite on the radio station may be a defense for poor Journalism. That article was based on the file footage which was not correct. Any TV journalist worth anything will know that the video clip far outweighs the voice over. At 6 am people are watching news, eating breakfast and talking to families. The Article came on air with Mozambique and gunfire and police vehicles with riot officers. Anyone who was planning a holiday to Mozambique was quickly focused on what was going on.*

eNCA has also gone to great lengths, with evidence provided to the Commission, to give a true picture of the situation in Mozambique in a series of stories and news reports. To ignore that and to instead hone in on three seconds of just one news report we feel is unwarranted.

[Nigel Hallows comments] *I will agree that the latest articles, including the coverage on this morning's news with regards to the elections has been much more balanced and informative although the over use of file footage from the war days is, in my humble opinion, bad taste. Granted there is not much I can do about that.*

eNCA believes that it is unlikely that holidaymakers would cancel trips to Mozambique on the basis of three seconds in a news report.

[Nigel Hallows comments] *what eNCA believes is irrelevant. The fact that talk and it was not three seconds. It was a good 3 to 4 minutes of news coverage. Please do not belittle this incident by trying to play it down.*

The public had access to a variety of information including:

- **The rest of the same news report on eNCA which was explicit that attacks did NOT occur all over Mozambique****[Nigel Hallows comments]** *The first story I refer specifically mentioned that the attacks were, and I quote "sporadic thought the country". Again I suggest you revisit your footage before you comment.*
- **Numerous other reports on eNCA which gave a complete picture of the situation there**

[Nigel Hallows comments] *The complaint is about a specific report and not about any follow up reports. The complaint wants a specific report to be rectified at the same time frame as the other report was aired. Preferably prior to the December holidays beginning as it would be pointless to do it after. There are still many people sitting on the fence waiting for "good news"*

- **Anecdotal evidence from other tourists**

[Nigel Hallows comments] *Again the complain is specific and not about Anecdotal evidence*

- **Travel advisories from DIRCO and other Governments**

[Nigel Hallows comments] *Same as above*

- **Information from tour companies**

- **The internet**

- **Radio**

[Nigel Hallows comments] *I find the fact that the best form of defense of shoddy workmanship from eNCA is that they believe the effects of their story are diluted by "information from tour companies" the "Internet" and the "Radio"*

Does this then justify a story full of half truths, speculation and sensationalism? I hope not

Anyone, with an interest in travelling to Mozambique would surely canvass opinion and information from several sources?

[Nigel Hallows comments] *How could a company like eNCA belittle the importance of their own news by saying that people would check other info and not just take their word for it? This is unbelievable. I do wonder if the CEO of eNCA has read this prior to sending it to me?*

While eNCA does regret the error, we feel that to suggest that there have been mass cancellations because of three seconds of a news report, is highly unlikely.

[Nigel Hallows comments] *What eNCA feels again is irrelevant. Should the list of cancellations lead to a full apology and rectification report then I will gladly send the names and contact details. Just request them with your commitment to make right should you receive them.*

We feel that in the year 2013, where travelers have access to such a wide variety of information that it cannot be sustained that three seconds of a news report will lead to hundreds of people going hungry.

[Nigel Hallows comments] *Again it astounds me to hear someone whose Job it is to inform the public, belittle the importance of the organization that he/she works for. This is just mindboggling.*

eNCA would like to suggest that in the absence of any evidence that the complainant's assertions are true, that this matter be dismissed.

[Nigel Hallows comments] *Your reply is an insult. Passing the buck, and trying to justify your journalists errors by diluting the importance of your article in the wider context is not a form of defense.*

More than even I am determined to see this through.

Do you really think for one second that I would have spent this time with these replies if it was not serious. Please do not belittle the incident with opinions that don't have any basis. I would not have gone to the BCC if I had not had firsthand experience of the damage that this article did.

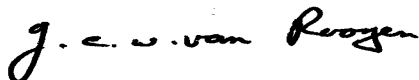
Again I beg of you. Make this right before its too late to fix."

EVALUATION

[6] The concerns raised by the Complainant as to the broadcaster's omitting to identify the material as archive material, and the use of the phrase "across the country", are justified, and were conceded as errors by the Respondent. News must comply with absolute standards of truth, and where there is any doubt as to the truth, the necessary corrective should be added. The newsroom would be well advised if, in future, it were to double-check whether the material broadcast is archive material or not. Indeed, if this kind of error is repeated, we will be obliged to consider finding against the Respondent. Since the BCCSA is not a court of law where damages may be claimed, the question is not what damages were caused, but whether an error was made that amounts to a contravention of the Code for Subscription Broadcasters.

[7] However, we believe that the following information saved the bulletin: "The violence is now mostly confined to several hundred kilometres north of the capital Maputo with Frelimo forces pinning back Renamo to the Gorongosa mountains in the centre of Mozambique ... Far away from tourist hubs on the coast." This limited the situation essentially to the mountains and, in effect, acted as a corrective to the error made earlier in the bulletin.

The complaint is, accordingly, not upheld.



**JCW VAN ROOYEN SC
CHAIRPERSON**

Commissioner Harper and Acting Commissioner Lötter concurred with the judgment of the Chairperson.