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CASE NUMBER: 48/2014

DATE OF HEARING: 12 FEBRUARY 2015
JUDGMENT RELEASE DATE: 16 MARCH 2015

BEYDON **COMPLAINANT**

vs

ALGOA FM **RESPONDENT**

TRIBUNAL: **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**
MR BRIAN MAKEKETA
MS GIUSEPPINA HARPER
PROF SUNETTER LŐTTER (ACTING COMMISSIONER)

The Complainant was invited but did not attend.

For the Respondent: Mr Alfie Jay, Programme Manager.

Misrepresentation in broadcast in regard to role of the executive in regard to sentencing -Beydon vs Algoa FM, Case No: 48/2014(BCCSA)

SUMMARY

Misinformation as to the role of the judiciary in regard to sentencing, found to have amounted to a contravention of the Broadcasting Code.

JUDGMENT

PROF KOBUS VAN ROOYEN SC

[1] The Registrar received a complaint concerning a presenter's omission to correct information about the role of the judiciary. The presenter opened by stating that he and a friend had been discussing the death penalty. He went on to recall his friend's rhetorical question as to how one could trust the government to administer the death penalty when it (the government) could not even run a post office properly. The presenter and his co-presenters agreed with the friend's viewpoint. When the Complainant sent the presenter a text message that it is in fact the judiciary that sentences offenders, the presenter rejected the correction. The Registrar referred the matter to me as Chairperson of the BCCSA, and I in turn referred the matter for a hearing by a Tribunal.

[2] **The complaint was formulated as follows:**

"On Friday 7 November 2014 at about 07h00 I tuned into the Daron Mann Breakfast Show on Algoa FM. My complaint relates to comments which Mr Mann made between 07h10 and 07h35 regarding the death penalty.

Mr Mann started his comments by stating that he and a friend had been discussing the death penalty. He stated that his friend said, that how could one trust this government to administer the death penalty when it (government) could not even run a post office properly. Mr Mann and his co presenters agreed with this statement

I then sent a text message to the studio wherein I pointed out that the government does not sentence offenders but rather an independent judiciary. I also pointed out that his comments were not fair.

Shortly after sending my text message, Mr Mann proceeded to read my text message on air. He commented on my text by saying that the government appoints chiefs justices etc. He also made another inaudible comment. His attitude when reading my text was very arrogant and dismissive.

I submit my complaint based on the following reasons. Mr Mann's comments before and after my text message were not truthful, accurate or fair. I also feel that he was not initially commenting on facts which were truly stated.

I also feel that he should be censored for implying that judges and magistrates are not impartial.

His comments are listened to by thousands of listeners and it could therefore have the effect that people would lose faith in the judiciary if they are led to believe that the judiciary is not impartial."

[3] **The Respondent's argument included the following:**

> "As you will hear from the clip attached, at no stage did the presenter say the judiciary is not independent, or for that matter, impartial. He did however suggest that 'political influence' will always prevail as the chief justice is appointed by the President. A brief glance at South Africa's history will confirm this – from Apartheid-era trials to Schabir Shaik – there has always been "political influence."
>
> The comments made by the presenter, relative to the text message sent by Mr Beydon, was accurately placed in context for the listener. Whilst Mr Beydon's perception of "arrogance and/or being treated in a dismissive" manner remain his perception, the Code of Conduct does not address "perception."
>
> Lastly, political influence is further confirmed by the fact that the President not only appoints the Chief Justice but also the judiciary – as independent as it may be "perceived"– this very judiciary is compelled to implement the laws as passed by politicians.
>
> The comments in our opinion are not malicious."

EVALUATION

[4] The presenter undoubtedly represented the position incorrectly. He clearly questions the sentencing procedure, which is in the hands of the judiciary. In fact, he leaves no doubt in the mind of an ordinary listener that sentencing is in the hands of politicians. Whilst it is true that certain powers do, in regard to the release of prisoners on bail, lie with the executive, the sentencing is entirely in the hands of the judiciary. To create a suspicion that, when it comes to sentencing, politicians interfere with the judiciary, is clearly wrong. To base this argument on the fact that judges are appointed by the President, amounts to grasping at straws that do not even exist. If the presenter wished to prove his point, he would have had to give an example. No example was, however, provided. The argument, as broadcast by the radio station, that the executive has in the past released prisoners, is irrelevant: this has nothing to do with sentencing, and instead related to parole. The approach of the radio station, through its presenter for whom it must take responsibility, is irresponsible.

[5] We are unanimously of the view that clause 12 of the Broadcasting Code has been contravened. The view expressed by the broadcaster is based on an entirely

incorrect perception of the role of the judiciary, and reveals a gross lack of knowledge.

[6] The complaint was, accordingly, upheld, and both the Respondent and the Complainant were requested to provide the Registrar with argument as to the sanction that should be imposed.

The Respondent: "Thank you for the draft submission. Having given serious consideration to the Tribunal's draft judgement and having discussed this matter with the presenter in question, we would like to propose the following:

1. That Daron Mann airs a retraction and an apology to Mr Beydon and all listeners.
2. That he, Daron, does this by providing a context to the broadcast of 7 November, the subsequent complaint, the Tribunal and the process followed.
3. Further, that Daron hosts at least 2 legal experts on air to discuss inter alia, the process followed in the appointment of the Chief Justice, the independence of the judiciary and the death penalty itself.
4. Lastly, that Daron invites Mr Beydon to meet with him after the show to apologise in person and explore some common ground.

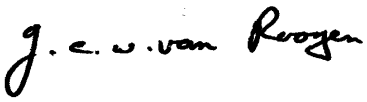
We respect the findings of the Tribunal and concur that in respect of legal matters in particular, more research needs to be done prior to comments being made on the fly. This will most certainly be communicated to ALL of Algoa FM's presenters. We remain committed to the Broadcast Code and will endeavor, as always, to air content in line with Nation building."

I trust you will find our proposed sanction acceptable.

The Complainant: ''Your email regarding my submission of sanction refers. I have taken note of the draft judgement. I ask that the tribunal direct the respondent to retract his comments and that he also be directed to issue an apology as well as a summary of the matter. I also ask that he be directed to do this during the same time slot as when his original comments were aired. I trust that you find this in order."

We have considered the representations and believe that common ground has been reached between the complainant and the broadcaster. We accept the proposal of the broadcaster. However, we believe that there must be a reference to this judgment of the BCCSA. The Complainant and the BCCSA Registrar must be provided with dates of the relevant broadcast or broadcasts as well as copies thereof, after the broadcast or broadcasts. The Broadcaster must let the Registrar have the wording of the apology, which must include a reference to this judgment, before it is broadcast so that it may be approved. The time of the apology must correspond with the time of

the first broadcast and the apology must be read by a representative of management, whose name must be stated, and not by the presenter.



JCW VAN ROOYEN SC
CHAIRPERSON

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