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Case Number: 06/2006

Date of Hearing: 25 JANUARY 2006

M THERON **COMPLAINANT**

vs

TUKS FM **RESPONDENT**

TRIBUNAL: **Prof Kobus van Rooyen SC (Chairperson))**
Prof Sunette Lötter
Prof Ravi Nayagar
Prof Gerrit Olivier

Complainant: **The Complainant did not attend.**

Respondent: **Mr Tim Zunckel, Programme Manager TUKS FM**

Children – large number in audience – intimate reference to sexuality amounting to contravention of Code. M Theron vs TUKS FM Case No:06/2006

SUMMARY

The complaint was that on the 8th November 2005 at 16:40 a presenter called a person and inquired what had taken place at a party. He was asked whether a certain girl had given him a "blow job". The complainant's daughter of 15 was with her in the motor car and the complainant regarded the use of the term and discussion thereof to have been seriously banal and not appropriate for a broadcast. Her view was that a large number of children would have been part of the audience at that time of the day.

The reference and discussion was regarded as having been harmful to a substantial number of children under 16 years in their sexual education and upbringing. The Tribunal is, accordingly, of the view that the reference and discussion was not only

inappropriate, but also harmful to the sexual education of younger children. It raised questions which a substantial number of parents simply do not wish to address at that stage. Even children from pre-school years are already given information about sexual organs at pre-primary schools, and the banal reference raised questions which, if asked, should be addressed at a later stage. The reference and discussion are likely to harm at least a substantial number of children in their sexual upbringing.

Complaint upheld and station fined to payment of a R1 500 fine.

JUDGMENT

JCW van Rooyen, Chairperson

[1] A complaint was received in regard to what was, jokingly, remarked and discussed by a presenter on Tuks FM, a radio station which functions under the auspices of the University of Pretoria and reaches the wider Tshwane community and also other neighbouring areas.

[2] The complaint was that on the 8th November 2005 at 16:40 a presenter called a person and inquired what had taken place at a party. He was asked whether a certain girl had given him a "blow job". The complainant's daughter of 15 was with her in the motor car and the complainant regarded the use of the term and discussion thereof to have been seriously banal and not appropriate for a broadcast. Her view was that a large number of children would have been part of the audience at that time of the day.

[3] The Response from TUKS FM reads as follows:

"The insert is a listener driven feature called the "Big Texter". Mr. Nash asked the listener to send him SMS messages about confessions they would like to make about any issue. The caller was part of one of these confessions.

Tuks FM is a community broadcaster with a target audience of 16 – 24 and the community we broadcast to can described as students of tertiary institutions in the

greater Pretoria area, staff of such institutions, their prospective students as well as their beneficiaries and alumni.

In terms of Section 18.1 "Broadcasters shall not broadcast material unsuitable for children at times when large numbers of children may be expected to be part of the audience."

Our Drive Time shows are programmed to be interactive due to the high volumes of people listening. I agree with the complainant that the specific insert, in context of the broader topic discussed that afternoon, has its' origins in the commonplace. The Tuks FM Programming Policy states, "All programming content is a direct reflection on the University of Pretoria and under no circumstances may the reputation or the name of the University be compromised." The presenter has already been reprimanded for his action on the day due to the nature of the topic and the angle taken.

I however believe that Section 18.1 has not been contravened in that the topic discussed, albeit banal, does not go into graphic detail about any sexual act. The word ,"blowjob" is mentioned, the act is not described. I agree that if explicit sexual detail was discussed the matter would have to be viewed in a different light.

In terms of Section 27 "No excessively and grossly offensive language should be used before the watershed period on television or at times when large numbers of children are likely to be part of the audience on television or radio. Its use during the periods referred to above should, where practicable, be approved in advance by the licensee's most senior programme executive or the designated alternate."

As the Programme Manager of Tuks FM I believe that the audio provided does not contravene this section. No formal description of the word "blowjob" can be found in the Collins Concise Dictionary. I however believe that this colloquial term does not constitute excessive or grossly offensive language.

Tuks FM is a station that is programmed by its audience due to the fact that 95% of the staff are drawn from our target market. Tuks FM has a reputation as being an edutainment station and a breeding ground for broadcast talent. We continually strive to create informative talk segments blended with cutting edge music. It is impossible to regulate all talk segments but through on-going training we endeavour to create an environment of responsible broadcasters."

[4] Mr Zunckel, programme manager, also addressed us at the hearing of this matter and the Tribunal was impressed with his understanding of radio and the community which the radio serves.

[5] It was not in dispute that a large number of young people between 12 and 16 was likely to have been part of the listeners at that time of the day. As a starting point, it may be accepted that children are nowadays much better informed than in the pre-television (pre-1976) era, not even to mention the Victorian era and its influence on morality in South Africa. Of course, there were also other influences at work in the pre-television era: schools, which were obliged after 1948 to promote Christian National education, as well as churches and many families, regarded sexual education – and certainly crude sexual references – as a taboo. The categorical and paternalistic attitudes of the pre-1980's are described well in a number of South African works.[1] Modern thinking has, fortunately, moved away from this categorical and damning approach. The new Films and Publications Act 65 of 1996 is based on the approach that children should be protected against that which is harmful or disturbing. Although these concepts are fairly vague, guidelines have been issued by the Films and Publications Board insofar as films are concerned. The Broadcasting Code itself also includes a number of clauses that are directed at protecting children. The meaning of "suitable" is not defined, however, and this kind of language might even be too broad in terms of Constitutional doctrine and practice.[2] I believe that it would be constitutionally prudent to read the word "suitable" as excluding whatever is "harmful" or "disturbing". Although these terms are still rather vague, they at least limit the matter of "suitability" to concepts that might be addressed with more rationality. They also accord with the terms suggested by the Ministerial Task Group: Films and Publications Control in 1994 (Published by the Government Printer 3 March 1995) and accepted by Parliament for purposes of the Films and Publications Act 65 of 1996. Furthermore, the test must be that of a

[1] See WJ Botha *Revolusie in die Moraliteit* (unpublished DD thesis, University of Pretoria 1982) at p 67 *et seq;* Sunette Lötter *Moraliteitswetgewing en die SA Strafreg (* unpublished LlD thesis, University of Pretoria 1991) at p 280 *et seq;* S Rudolph *Sedes, Godsdiens en Publikasiebeheer in SA (unpublished LlD thesis, University of Pretoria 1991).*It might also be informative to glance at Chapter one of JCW Van Rooyen *Publikasiebeheer in Suid-Afrika (Juta 1977).* These publications explain the paternalistic, categorical and damning approach to what was regarded as immoral and worthy of banning by the State.

[2] See *Islamic Convention Unity v IBA and Others* 2002(4) SA 294(CC) at par [28]; *De Reuck v Director of Public Prosecutions and Others 2004(1) SA 406(CC).*

substantial number of children within the large number required by the Code. The over-sensitive must not be the test.

[6] Applying this standard, the inclusion of a crude reference and implied discussion relating to an intimate form of sexuality in a broadcast whose audience includes a large number of children is, to our minds, harmful. It confronts a substantial, if not a large, number of children under the age of 16 with a form of intimate sexuality which they would be unable to understand and cope with. The Tribunal is, accordingly, of the view that the reference and discussion was not only inappropriate, but also harmful to the sexual education of younger children. It raised questions which reasonable parents simply do not wish to address at that stage. Even children from pre-school years are already given information about sexual organs at pre-primary schools, and the banal reference raises questions which, if asked, should be addressed at a later stage. The reference and discussion are likely to harm at least a substantial number of children in their sexual upbringing.

[7] **The complaint is upheld.**

Since the Tribunal regards the banal reference and discussion as a serious contravention, it has decided to impose a fine of R1 500 for this contravention.

JCW VAN ROOYEN SC
CHAIRPERSON

Commissioners Lötter, Nayagar and Olivier concurred