BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA

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CASE NUMBER: 10/2005

DATE OF HEARING: 08 FEBRUARY 2005

C SMITH **COMPLAINANT**

vs

SAFM **RESPONDENT**

TRIBUNAL: Mr Ratha Mokgoatlheng (Deputy Chairperson)
Prof Henning Viljoen (Viewer / Listener Representative)
Dr Linda Venter (Co-Opted)

Complainant: The Complainant in person

Respondent: Mr Fakir Hassen, Manager Broadcast and Compliance, Policy and Regulatory Affairs of the SABC accompanied by Mr Jimi Matthews, Head of TV News

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Complaint that presenter of programme failed to intervene when Complainant's good name and reputation were seriously impaired during discussion of controversial issues of public importance - presenter knew or should have known that Complainant was not the author of racist statement attributed to her – such injury to her reputation so serious that opportunity to put her side of the case in another programme the following day not sufficient to remedy the situation – contravention of clause 36 of the Code – Respondent ordered to broadcast an apology – complaint upheld - Smith vs SAFM, Case No: 10/2005.

SUMMARY

During the programme "After eight debate" reference was made by the Presidential spokesman to a racist statement attributed to the Complainant. Complainant is a well-known journalist and human rights activist. Complaint that presenter of

programme, who was a former colleague of the Complainant, failed to intervene when Complainant's good name and reputation were seriously impaired during a discussion of controversial issues of public importance. Presenter knew or should have known that Complainant was not the author of racist statement attributed to her. Such injury to her reputation was so serious that opportunity to put her side of the case in another programme the following day was not sufficient to remedy the situation. The Tribunal found a contravention of clause 36 of the Code and ordered Respondent to broadcast a correction. The complaint was upheld.

JUDGMENT

HP Viljoen

[1] On 15 December 2004, during the regular programme on a Thursday evening, "After eight debate" on SAfm, a debate was broadcast between the editor of the "Sunday Times", Mr. Mondli Makhanya and the Presidential spokesman, Mr. Bheki Khumalo. The presenter of the programme was Mr. John Perlman who is described by the representative of the Respondent, Mr. Hassen Fakir as a respected journalist. The debate centered around the President's style in addressing political issues in his weekly newsletter on the ANC website. During the debate specific reference was made to the President's criticism of the Complainant and also of emeritus Archbishop Desmond Tutu.

[2] What upset the Complainant was the reference by Mr. Makhanya to the President's allegation about her, namely that she was quoted as saying that "blacks raped and they were savage beasts who could not keep their penises in their pants" or words to that effect. It was at this stage that the presenter referred to the Complainant as an activist in *inter alia* HIV and AIDS issues and women and child abuse.

[3] At a later stage in the debate, the discussion again turned to the Complainant and this time the President's spokesman repeated what the President had said about the Complainant. He continued with the allegation that the Complainant said very disparaging things about black people.

[4] When the Complainant heard these things being said about her on the radio, she made an effort to phone in to the programme as was done by other listeners. However, she could not get through as the lines were very busy. Later in the evening, after the programme, she did manage to speak to a manager and voiced her objection to the unbalanced way in which the programme was presented and the harm that it caused her good name. The manager then agreed with her on a date on which she would be able to put forward her side of the case on air. It was agreed that she would be allowed time on the programme "AM live" at about 7:52 the next morning which was 16 December, a public holiday. It should be mentioned here that the two programmes, "After eight debate" and "AM live" are

both news programmes run by the news division of the Respondent. It should further be mentioned that the Complainant had once been a station manager of SAfm, the Respondent, and she was therefore well versed in the inner workings of the Respondent broadcaster.

[5] The next morning, on the "AM live" programme, at about 7:52, the Complainant featured for about 3 minutes, a generous time on radio, according to Mr. Hassen. Before she came on air, a replay was broadcast of Mr. Khumalo's comments about the Complainant the previous evening, putting her reaction into context. During the time at her disposal, the Complainant strongly denied the racist words that had been attributed to her by Mr. Khumalo. She pointed out that those were the words that had been uttered by a certain Prof Rheims, an Afro-American professor from Massachusetts, who, the Complainant averred before the Tribunal, was a "nut case". The important point made by the Complainant was that the presenter of the programme the previous evening, Mr. John Perlman, knows her well as a journalist and as a former colleague and knows or should have known that the words attributed to her were not true and would not have been said or written by her. It was the presenter's duty, according to the Complainant, to have intervened when Mr. Khumalo uttered the words complained of in order to set the record straight.

[6] In his written response to the complaint, Mr. Hassen said about the "After eight debate" programme: "..although it falls under the ambit of news programming being part of our Current Affairs show, it is principally an exchange of views moderated by a journalist who is informed about current events".Although various clauses in the Code of Conduct applied by this Tribunal were alleged to have been transgressed, we consider it necessary to confine ourselves only to the one contained in 36.1 and 2. This applies to controversial issues of public importance. It is beyond doubt that a discussion of the President's style in his weekly letter on the ruling party's website is a matter of public importance. It is also well known that the President recently criticized both Archbishop Tutu and the Complainant for things that they are purported to have said or done. Mr. Makhanya published an article in the Sunday Times in which he criticized the President's response to a speech that Archbishop Tutu had made. This gave rise to the very debate that forms the subject of these proceedings. The topic of the debate was: "Should there be limits on the President's engagement in public debate?"

[7] The presenter of the debate was Mr. John Perlman. He was described by both sides to this dispute as an experienced and respected journalist. Being so experienced, we think that it would be reasonable to have expected of him to have anticipated that the names of Ms Smith and Archbishop Tutu would come up during the debate. It was, after all, the President's criticism of these two persons' views that gave rise to this debate. If that is so, it could be expected of the presenter to have been appraised of the views of the two mentioned persons. We have to accept that the views of the Complainant were known to Mr. Perlman.

She is a well-known journalist and describes herself as someone with an international reputation as an activist and also as a vocal human rights activist. She has won various awards as a journalist. Part of her reputation as a journalist stems from her work in opposing apartheid. These are hardly the credentials of a journalist who would be the author of the kind of statement referred to in paragraph [2] above.

[8] This brings us to the duties of the presenter of a debate of this kind in which controversial issues of public importance are discussed. The basic requirement of clause 36 of the Code is that balance should be obtained between opposing viewpoints and that people should be treated fairly. These requirements have been expounded in various judgments of this Tribunal. A few relevant cases are: *R Kirby van SAFM: Case No: 52/2003; R & M vs SABC3: Case No: 03/2004; Freedom of Expression Institute & Others vs SABC: Case No: 11/99; A Sparks vs SABC: Case No: 1/2000*. These requirements have been admitted by the Respondents to have been applicable. In their written response to the complaint they state that this debate programme is "…an exchange of views moderated for fairness and balance by a journalist". What is expected of the presenter if reference is made during the debate to some statement falsely attributed to a person of whom the presenter knows it is not true? We think that the presenter should immediately step in and correct the false impression, especially if the false impression is damaging to the extreme, as was the case here; *South African Jewish Board of Deputies & Others v Cape Talk; Case No: 35/99*. To say, as the Respondent does, that the debate was steered on a completely different course, making it difficult for the presenter to return to the Charlene Smith issue, is not sufficient excuse in our view. At a later stage in the debate the presenter stepped in to correct a false impression when a caller wrongly attributed some statement to Archbishop Tutu. This is what the presenter should have done in the case of the Complainant.

[9] The Respondent's excuse for the neglect by the presenter to set the record straight during the debate, is that the Complainant was afforded the opportunity to put her side of the case the next morning on the "AM live" programme at about 7:52. As stated above, the day following the "After eight debate" programme was the 16th December, a public holiday. At the hearing, the representative of the Respondent could not give the estimated listener numbers for their Thursday evening and the Friday morning programmes. After the hearing he informed the writer hereof that according to the RAMS figures for listener numbers for the "After eight debate" there were 80 000 listeners whilst the figure for the "AM live" show the next morning was 113 000. The Complainant has not had an opportunity to question these figures during the hearing. Given the conclusion that the Tribunal has come to in this matter, we deem it not necessary for the Complainant to respond to this information.

[10] It is understandable for the Respondent to rely on the provision of clause 36.2 as a defence against the complaint in question. The Complainant did indeed have the

opportunity to give her viewpoint, although not in the same programme than the one in which her name had been so flagrantly defamed. According to the Respondent the "AM live" show, like the "After eight debate", are both programmes run by the News Division and accountable editorially to the Head of Radio News. Be that as it may, we think that the way in which the presenter handled the debate during the "After eight debate" programme was fatally flawed, at least as far as the good name and dignity of the Complainant is concerned. The presenter of a programme like the one in question is the person in control and he/she should be well prepared to protect the reputation of people whose names are more than likely to come up during the heat of the debate. We find that the presenter in this case knew or should have known that the Complainant was not the author of the racist statement attributed by the President and his spokesperson to the Complainant. When the statement was made and attributed to the Complainant during the debate, the presenter should immediately have intervened and set the record straight. This he did not do. The fact that the Complainant could give her viewpoint on another programme the following day, is not sufficient to correct the serious injustice that had been done to the Complainant. We find that the Respondent is guilty of a contravention of clause 36 of the Code.

[11] The Complainant has asked that we order the presenter of the programme, Mr Perlman to personally apologise to her. It is not within our power to issue such an order. We can only issue an order to the broadcaster concerned as it is the broadcaster who has signed the Code of Conduct. We now make the following order:

At the first broadcast that is practically possible of the programme "After eight debate" after release of this judgment, at the start of the programme, the following correction has to be broadcast verbally:

On 15 December 2004 during the "After eight debate", reference was made to President Mbeki's criticism of a racist statement that was attributed to the journalist Ms Charlene Smith. This racial slur on Ms Smith was repeated by the Presidential spokesman, Mr Bheki Khumalo who participated on the programme. The presenter of the programme did not intervene to correct the false impression that was created by this statement and which seriously intruded upon Ms Smith's good name and reputation. After a complaint was lodged by Ms Smith with the Broadcasting Complaints Commission of South Africa, it was found that the broadcaster had contravened the Code of Conduct and it was ordered to broadcast this correction.

In the result the complaint is upheld.

Prof Henning Viljoen
Commissioner

The Vice-Chairperson of the Commission, Mr. Ratha Mokgoatlheng and Dr Linda Venter, co-opted member, concurred with this judgment.