



P.O.Box 412365 • Craighall • Tel (011) 325-5755 • Fax (011) 325-5736 • e-mail: [bccsa@nabsa.co.za](mailto:bccsa@nabsa.co.za)  
No 2 Albury Park • Magalieszicht Ave • Dunkeld West • 2196 • [www.bccsa.co.za](http://www.bccsa.co.za)

**CASE NUMBER: 22/2007**

**DATE OF HEARING: 3 AUGUST 2007**

**M STEYN**

**COMPLAINANT**

**vs**

**HEART 104.9 FM**

**RESPONDENT**

**TRIBUNAL:** Prof Kobus van Rooyen SC (Chairperson)  
Prof Henning Viljoen  
Dr Lynda Gilfillan (Co-opted)  
Ms Zenobia Africa (Co-Opted)  
Adv Ilse van der Merwe (Co-Opted)

**Complainant: The Complainant did not attend**

**For the Respondent: Gavin Meiring, Station Manager; Selwyn Bartlett, Programme Manager; Vernon Adams and Lee Downs Heart 104.9 FM .**

---

*Dignity – Tribunal refraining from coming to a conclusion in the circumstances of the case – the person allegedly prejudiced not having complained – complaint not upheld- Steyn vs Heart 104.9FM, Case no: 22/2007(BCTSA)*

---

## **SUMMARY**

**A complaint was received that referring to a government Minister as a “doos” ( a crude word signifying that he is an idiot or stupid) is offensive, lacking in dignity and unethical. Although this Tribunal has, on occasion, held that the privacy or dignity of a person might be protected where a person other than the person whose**

rights have been said to have been infringed complains, it is impossible in the present matter to come to a fair decision on the matter without having heard the Minister. He was not the complainant and we do not know whether he is even aware of the broadcast. It would be presumptuous for the Tribunal to come to a decision without hearing his view on whether legitimate public interest would permit this kind of reference. In the absence of further evidence and argument we, accordingly, cannot come to a decision which would be rationally related to the facts and argument. The inquiry cannot be proceeded with fairly and the complaint is, accordingly, dismissed.

---

## JUDGMENT

### JCW VAN ROOYEN SC

- [1] A complaint was lodged with the registrar against Heart 104.9, a radio station which broadcasts in Cape Town.
- [2] The complaint was that one of the station presenters, in dealing with the recent debate on crime statistics as commented on by the Minister of Police, referred to the said Minister as a “doos”. The presenter obviously did not agree with the Minister and used the crude word in rejecting the Minister’s argument.
- [3] In the context the primary meaning of the Afrikaans word “doos” is “vagina”. The term is, however, often used nowadays in describing a person as stupid or as an idiot. In the context of the broadcast the word was indeed used in its secondary meaning as “idiot”. It was argued that the term simply meant that the Minister was an idiot in trying to convince the public that the crime statistics were not that problematic, and that crime was not on the increase. It was argued by the broadcaster that even if the use of the term infringed upon the right to dignity of the Minister, it was overridden by a legitimate public interest as provided for in clause 38 of the Broadcasting Code. Ministers, as political heads of their

departments, it was argued, are not protected to the same extent as ordinary voters would be protected and it had been appropriate to use the word in the circumstances. This point of view accords with judgments of our Courts. See e.g. *Mthembi-Mahanyele v Mail & Guardian Ltd* 2004 (6) SA 329 (SCA).

[4] Although this Tribunal has, on occasion, held that the privacy or dignity of a person could be protected where a person other than the person whose rights have been said to have been infringed complains, it is impossible in the present matter to come to a fair decision on the question of legitimate interest without having heard the Minister. We do not know what his reaction might have been and we do not even know whether he is aware of the broadcast. It would be presumptuous for us to come to a decision on the question of legitimate public interest without having heard his view on the matter. The Rules of the Commission do not provide for a procedure by way of which the view of a person other than the complainant and the broadcaster could be introduced in the proceedings. Of course, expert evidence is provided for, but this is not a case where expert evidence would be appropriate. We, accordingly, refrain from coming to a decision on the argument of the broadcaster that it is permissible to call a person an idiot by using a crude word such as “doos” when that person is a Minister of State.

[5] The Tribunal wishes to emphasise that there may be circumstances where a finding may be made that the right to dignity or privacy of a person has been infringed upon and that the Code was contravened, even where that person has not complained. The difficulty arises when there is a debate as to whether legitimate public interest is a defence and a member of the public complains without the person attacked having complained. The mere fact that a person does not complain does not mean that he or she has decided to abide by whatever is decided by the Tribunal. It cannot even be assumed that the person attacked has heard of the broadcast or heard it him- or herself.

- [6] The question whether children were possibly harmed by having heard the crude word was not addressed in the complaint, which only referred to its use as having been offensive, unethical and not dignified. We, accordingly, also do not come to a decision on this aspect.
- [7] In the absence of further evidence and argument we, accordingly, cannot come to a decision which would be rationally related to the facts and argument as required by administrative law. The inquiry is not proceeded with and, accordingly, the complaint is dismissed.

**KOBUS VAN ROOYEN SC**  
**CHAIRPERSON**

*Commissioner Viljoen and Ad Hoc Commissioners Gilfillan, Africa and van der Merwe concurred.*