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Case Number: 25/2003

Date of Hearing: 20 June 2003

M Evans & A Philips **Complainant**

vs

SABC 2 **Respondent**

TRIBUNAL: Mr Ratha Mokgoatlheng (Deputy Chairperson)
Ms Refiloe Mokoena (Co-opted member)
Prof Henning Viljoen (Viewer & Listener Representative)

Complaint about the use of language that offends in general and that is offensive to the religious convictions of the Complainant – such use not amounting to hate speech – no contravention of Code – despite this, Respondent in any case broadcasting an apology - complaint dismissed – Evans v SABC2, case: 25/2003

SUMMARY

Complaint, about the use of strong language and a profanity in an episode of "Geraas". This complaint has to be judged in the light of the Broadcasting Code and the freedom of expression clause in the Constitution of South Africa. The Constitution allows for certain limitations to the freedom of expression. The use of the language complained of not falling under limitations. No contravention of Code found. Despite this, the Respondent broadcast an apology. The complaints were dismissed.

JUDGMENT

HP Viljoen

[1] The fifth birthday of the series "Geraas" was celebrated on 14 May 2003 with the broadcast of, *inter alia*, mishaps or bloopers that happened with the production of previous episodes but were never broadcast. The presenter, Jacques du Preez, was shown on a few occasions using what were obviously expletives but the words were bleeped out. Only on one occasion can the words "Here Jesus" be heard. This offended the Complainant.

[2] The Complainant, in her written complaint, expressed concern about the message conveyed to young people if presenters were allowed to use the words, which the Complainant refers to as the "f…" word, in programmes with the youth as their target audience. She considered that the Respondent had its priorities wrong when it found it necessary to bleep out common swear words but left in the taking of the Lord's Name in vain. What is not clear to us, is that the Complainant is able to refer to the words as the "f…" words, despite the fact that they were bleeped out. As the words were bleeped out and could not be heard, we find that there could be no contravention of the Code. On the other hand, the words "Here Jesus" could be heard and we have considered this part of her complaint.

[3] In the previous Code of Conduct that we applied, it was a contravention to broadcast material which was offensive to the religious convictions or feelings of a section of the population. In the case of *Islamic Unity Convention v Independent Broadcasting Authority and Others* 2002 (5) BCLR 433 the Constitutional Court decided that this test was too wide and ruled that the test should be substituted with the limitation to freedom of expression as contained in section 16(2) of the Constitution of the Republic of South Africa. For the sake of completeness, the whole of section 16 is quoted hereunder:

(1)Everyone has the right to freedom of expression, which includes

(a) freedom of the press and other media;
(b) freedom to receive or impart information or ideas;
(c) freedom of artistic creativity;
(d) academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to -
(a) propaganda for war;
(b) incitement of imminent violence; or
(c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

[4] Following upon the Constitutional Court's decision, the Code of Conduct of the BCCSA was substantially amended and the new Code came into operation on 7 March 2003. As a result, this Tribunal now has to decide complaints like the present one in the light of the limitation to the right to freedom of expression as contained in section 16(2) of the Constitution. This is a strict test. The words complained of would only fail the test if we were to find that the words amounted to the advocacy of hatred based on religion and, furthermore, that the words constituted incitement to cause harm. On the Complainant's own admission, the words were merely used as a "throw away" and therefore it cannot be regarded as the advocacy of hatred. For this reason we find that there was no contravention of the Code.

[5] On 28 May 2003, at the end of a following episode in the series called "Geraas", the Respondent broadcast a written apology. In it they apologised to any of their viewers of the episode broadcast on 14 May who may have been offended by anything that was said in that broadcast. Even if we had found a contravention of the Code, this apology would probably have been sufficient remedy.

[6] **As a result, the complaint is dismissed.**

HP Viljoen
27 June 2003

The Deputy Chairperson, together with the co-opted member, concurred with the judgment.