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CASE NUMBER: 33/2003

DATE OF INQUIRY: 22 AUGUST

SITHOLE

COMPLAINANT

VS

RADIO 702

RESPONDENT

**TRIBUNAL: PROF KOBUS VAN ROOYEN (CHAIRPERSON)
PROF HENNING VILJOEN
MS REFILOE MOKOENA-MSIZA (CO-OPTED)**

FOR THE COMPLAINANT: THE COMPLAINANT IN PERSON

**FOR THE RESPONDENT: MR YUSUF ABRAMJEE, STATION MANAGER
AND MS PHELADI GWANGWA, REGULATORY AFFAIRS MANAGER**

*Hate speech –reference to possible theft – not racist – not hate speech. Sithole vs 702
Talk Radio, Case No: 33/2003*

SUMMARY

The presenter John Robbie was accused as having made a racist remark amounting to hate speech in an interview with Gaye-Derby-Lewis, a well known politician known for her conservative stance in politics of the past. When she described that

three Black people had hugged her while leaving the court after charges had been withdrawn, Robbie observed whether she had checked whether she still had her wallet after the hugs. He immediately added that he was “just kidding”.

The Tribunal held that John Robbie did not intend to hurt anyone by his observation. Nor was it objectively of such a nature that it could be regarded as racist or as amounting to hate speech based on race. The accent was on the hug and that if persons who do not know you suddenly hug you, you should be suspicious. The problem is, of course, that he was sailing close to the wind, since the stereotype was, unfortunately, ready to pounce upon him. He must have realized this and immediately corrected the situation by observing that he was “just kidding”. Another possible explanation was that he might have included the off the cuff reference because of the interviewee’s conservative stance in her past political career.

The complaint was not upheld.

JUDGMENT

JCW VAN ROOYEN

[1] The well-known and experienced presenter of Radio 702, John Robbie, was accused by a listener of having made a racist remark amounting to hate speech in an interview with Gaye Derby-Lewis, a well-known erstwhile politician known for her conservative stance in the politics of the past. When people were arrested last year on charges of having planned an overthrow of the government, she was also arrested and let out on bail. Charges against her were dropped when it appeared that there was no evidence that she was involved. In her interview she described how three Black people had hugged her while she was leaving the court, after charges had been withdrawn. Robbie reacted by asking whether she had checked whether she still had her wallet after the hug. He immediately added that he was “just kidding”.

[2] The Complainant filed a complaint with the Registrar of this Commission. The complaint read as follows:

On Radio 702 on the 19 June 2003 at 06:45 on the John Robbie Show; John had an interview with Gaye Derby-Lewis. Gaye told him that when she was released she was hugged by three black people. John went on to ask her whether she still had her wallet thereafter. My interpretation of that question is that black people steal. John does not know whether these three black people had previous criminal records or not. John does not even know what gender these three black people were. The only information he had at the time of the interview was that the hugging of Gaye was done by PEOPLE who were THREE in number and that their skin colour was BLACK. I (and many other well meaning South Africans) view this in serious light; if one takes into account that we are busy building a non-racial society riddled with prejudices of the past. Instead of contributing to the unity of the various sections of our society; John is busy dividing them through his unhelpful utterances.

John Robbie is Irish-born and maybe still carries an Irish passport which would make him an Irishman living and working in our country and abusing our hospitality and generosity. If he does indeed carry the Irish passport it means; should South Africa be engulfed in a racial civil war; John will have a home to run back to. If I were to follow him to his home country, I would probably be allowed to stay and my status would be that of a refugee and not of an Irishman.

Whether your commission finds him guilty or not; I would like him to play the recording on air and publicly retract the question and apologise for asking such an unhelpful question and he should commit himself to working together with all well meaning South Africans towards a better future for all our children where race; religion; gender; creed etc will be of no value.

- [3] At the hearing of this matter, Mr Sithole was adamant that he regarded the observation of John Robbie as racist and that he had been particularly hurt by the comment, which, according to him, categorized Black people as thieves.
- [4] We have considered whether the observation amounted to the advocacy of hatred based on race and whether it constituted incitement to cause harm. The test is an objective one and “harm” is regarded as including serious emotional harm. Given the past degradation of Blacks by the Apartheid system, Mr. Sithole’s complaint is an understandable one. The question is, however, whether the observation has the serious consequences alleged by Mr. Sithole.
- [5] Firstly it is true that Blacks have, from certain quarters, been stereotyped as thieves without any foundation for this sweeping statement. Such an approach is clearly racist and must be rejected as unacceptable within an equality driven

democracy. The stereotype is also in conflict with the presumption of innocence, which is guaranteed by our Constitution in section 35(3)(h). This Tribunal has expressed its concern about the ease with which alleged charges against a person are readily misunderstood by a large part of the community as if the person has already been convicted. That is why we have accentuated that rushing into broadcast without proper inquiry and without having granted the person accused an opportunity to respond, is highly irresponsible.¹

[6] We are of the view that John Robbie did not intend to hurt anyone by his observation. Nor was it objectively of such a nature that it could be regarded as racist or as amounting to hate speech based on race. The accent was on the hug and that if persons who do not know you suddenly hug you, you should be suspicious. The problem is, of course, that he was sailing close to the wind, since the stereotype was, unfortunately, ready to pounce upon him. He must have realized this and immediately corrected the situation by observing that he was “just kidding”. Another possible explanation was that he might have included the off the cuff reference because of the interviewee’s conservative stance in her past political career.

[7] Our conclusion is that the observation was unfortunate, but that the context indicated that it was not racist and also did not amount to hate speech. The complaint is dismissed.

JCW VAN ROOYEN SC
CHAIRPERSON
29 August 2003

The other Commissioners agreed with the judgment by the Chairperson.

¹ *Rogers v SABC 05 /2003.*