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CASE NO: 37/2005

Heard on 18 May 2005

SABC

APPELLANT

v

C SMITH

RESPONDENT

BEFORE: PROF. HENNING VILJOEN (BCCSA COMMISSIONER)

FOR THE APPELLANT: Mr Fakir Hassen (Manager - Broadcast and Compliance, Policy and Regulatory Affairs) & Ms Pippa Green (Head of SABC Radio News)

FOR THE RESPONDENT: No appearance

APPLICATION FOR LEAVE TO APPEAL

JUDGMENT

Prof Henning Viljoen

- [1] On 18th may 2005 I heard argument by Mr Fakir Hassen and Ms Pippa Green on why I should grant the Applicant leave to appeal against the judgment by the Tribunal of the BCCSA in case number 10/2005. Unfortunately I did not have the advantage of hearing oral argument by Ms C Smith, the Respondent. She did,

however, lodge a 14 page response to the Applicant's grounds for applying for leave to appeal and this I considered.

- [2] The Applicants, in their oral presentation, put forward two points: the first was the apparent mistake the Tribunal made with the nature of the programme called "After Eight Debate". I do not consider this argument as one that would materially affect the outcome of a possible appeal. The second was the precedent that was set by the Tribunal's judgment and the heavy duty it places on presenters of debates of this kind.
- [3] Because this is an application for leave to appeal, and not the appeal itself, I need not and cannot decide that the Tribunal's judgment was clearly wrong. I should decide whether there is a reasonable possibility that another body (the Appeal Tribunal) would decide that the Tribunal was clearly wrong in its decision.
- [4] I think a crucial matter in this application is the following:

In the Tribunal's view, the omission by the presenter to intervene on the Respondent's (complainant's) behalf during the debate, was so flawed that compliance by the broadcaster with clause 36.2 of the Code could not remedy the situation. After hearing argument on this, I think that there is a reasonable possibility that an appeal tribunal might find that this was clearly wrong.
- [5] I have also been convinced by the argument about the severe consequences for presenters of this kind of programme by the precedent setting judgment of the Tribunal. It might be possible that an Appeal tribunal would find that the judgment has the effect of stifling robust debate in future and this could inhibit the right to freedom of expression. In such case the Appeal tribunal could find that the Tribunal's judgment was clearly wrong.
- [6] For these reasons I have decided to grant leave to the Applicant (SAFM) to appeal against the Tribunal's judgment in case no 10/2005. The sanction imposed on the broadcaster in the judgment by the Tribunal is hereby suspended, pending the outcome of the appeal.

PROF HENNING VILJOEN
BCCSA COMMISSIONER
18 MAY 2005