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**CASE NUMBER: 65/2005**

**Date of Hearing: 28 November 2005**

**JF HEYDENRYCH**

**COMPLAINANT**

**vs**

**JACARANDA 94.2**

**RESPONDENT**

**TRIBUNAL:** Prof Kobus van Rooyen SC (Chairperson)  
Mr Ratha Mokgoatlheng (Deputy Chairperson)  
Adv Robin Sewlal  
Dr Linda Venter

**For the Complainant: The Complainant did not attend.**

**For the Respondent: Ms Pamela Stein of Webber Wentzel Bowens, accompanied  
Mr Llyod Madurai, Programme Manager, Jacaranda FM.**

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*Dignity – utilization of the word “porra” in an ethnic based joke – held that the word negates dignity and humanity, as espoused by the Constitution. Heydenrych v Jacaranda FM 65/2005*

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#### **SUMMARY**

**Dignity infringed by the utilization of the word “porra”. Held that the word is degrading, offensive and demeaning of the dignity of persons of Portuguese descent.**

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## JUDGMENT

### Mr Ratha Mokgoatheng

- [1] The Complainant was aggrieved by a broadcast on the 5<sup>th</sup> November at 09:02 on Jacaranda 94.2. The presenter Clayton Robbertze commenting about the traffic, reported that a truck loaded with fruit and vegetables had overturned, that this had caused a traffic jam. Cynically he added that he did not want all the “Porras” - pejoratively referring to persons of Portuguese descent - to run to the scene. The presenter immediately, tongue in cheek, proffered a cynical apology to the listeners.
- [2] The Complainant believed these insinuations to be discriminatory, demeaning, racist and unconstitutional. The Respondent was initially of the view that the presenter, by mentioning Portuguese people in this context, intended to be humorous and comedic; that poking fun at each other, whether Black, White, Coloured or Indian was acceptable. The further contention was that the comments were protected by the Constitutional provision on freedom of expression.
- [3] At the hearing the Respondent, advisedly in our view, pleaded guilty to contravening the Code of Conduct and unreservedly tendered its apology to the Respondent and persons of Portuguese origin.
- [4] The applicable Rule 38 reads as follows:

#### **Privacy**

Insofar as both news and comment are concerned, broadcasting licensees shall exercise exceptional care and consideration in matters involving the private lives, private concerns **and dignity**<sup>1</sup> of individuals, bearing in mind that the rights to privacy **and dignity** may be overridden by a legitimate public interest.

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<sup>1</sup> The Broadcasting Complaints Commission has resolved on the 22<sup>nd</sup> May 2004, with the agreement of the broadcasters under its jurisdiction, to explicitly add dignity as a protected interest in this clause. The proviso of a legitimate public interest also applies as an exception. This amendment was approved by the ICASA in April 2005. The amendment has been applicable as from 1 May 2005 to all broadcasters under the jurisdiction of the BCCSA.

- [5] The comments in the context that were uttered, were light hearted, jocular and in our view did not contain the gravity of the advocacy and incitement of the promotion of hate as required by Rule 16.3(b) of the Code of Conduct. Section 16 of the Constitution of the Republic of South Africa guarantees the right to freedom of expression which includes the freedom of artistic creativity, academic freedom and scientific research. Section 16(2) explicitly excludes from the protection of freedom of expression and free speech, the propaganda for the incitement of imminent violence or the advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.
- [6] *Madam Justice O' Regan in Khumalo v Holomisa 2002 (5) SA 501 (CC) the para [27]* held that the right to dignity in Section 10 of the Constitution includes other rights to personality, which in justifiable circumstances further limit the right to freedom of expression. Section 36 of the Constitution provides that a fundamental right may be limited as long as the limitation is justifiable and reasonable in an open and democratic society based on human dignity, equality and freedom.
- [7] South Africa has recently emerged from an oppressive, racially divided past. Our history dictates that persons should be overtly sensitive to utterings which are racially based, as this is likely to promote and entrench racial stereotyping which our Constitution in the promotion of its objectives, spirit and import pertinently exhorts South African citizens to abjure.
- [8] In our view the word "Porra", objectively viewed, is racially pejorative, unreasonable, offensive and degrading of persons of Portuguese descent. This word negates one of the foundational tenets of our Constitution; the promotion of dignity, non racialism and discrimination that is based on race ethnicity, religion or creed.

- [9] The utilization of the word “Porra” was not justifiable or reasonable under the circumstances it was used, and was obviously a gratuitous usage of stereotyping Portuguese descendants as nothing but keepers and sellers of fruit and vegetables. The Respondent has, by conceding the injudiciousness of the presenter’s utterings, and pointing out that the presenter, by immediately apologizing, ameliorated the gravity of the contravention.
- [10] The Respondent contends that the comments was meant to be a joke, that no malice or intention to cause harm or offence was intended; that it is unlikely that these comments would be repeated, that a reprimand is sufficient.
- [11] The Commission views the infraction of the dignity of individuals in a very serious light given the Constitutional imperatives to build a society which extols human dignity and human rights.
- [12] The Tribunal is of the considered view that a reprimand is not an appropriate sanction. The Respondent is fined the amount of R5000.00 payable on the 15 January 2005.

**The Complaint is upheld**

**RATH MOKGOATLHENG  
DEPUTY CHAIRPERSON**

*The Chairperson, Prof Van Rooyen, Commissioner Sewlal and Co-Opted member Venter concurred with the judgment.*