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CASE NUMBER: 20/2011

DATE OF HEARING: 9 JUNE 2011

F MAHAMED **COMPLAINANT**

vs

SAFM **RESPONDENT**

TRIBUNAL: **PROF JCW VAN ROOYEN SC (CHAIRPERSON)**
MR B MAKEKETA
MS K MDLULWA
MS M NKWANE

For the Complainant: The Complainant in person.

For the Respondent: Mr. Fakir Hassen: Acting General Manager: Special Projects accompanied by Ms Veronica Barnard, Compliance Officer of the SABC assisted For the Respondent: Mr. Fakir Hassen: Acting General Manager: Special Projects accompanied by Ms Veronica Barnard, Compliance Officer of the SABC assisted by Mr D O'Donnell, Station Manager and Mr J Matshane, Programme Manager of SAFM.

Violence or unlawful conduct not promoted - Mahamed vs SAFM, Case No: 20/2011(BCTSA).

SUMMARY

This is an appeal against the adjudication of a Commissioner which she found that the broadcast of the programme complained about by the appellant did not contravene the Broadcasting Code.

On appeal the Tribunal held as follows, dismissing the appeal:

In balancing the relevant rights weight must be given to the right of Mr Mc Bride to put his view. It was not necessary for the anchor to have criticised him for his view. His view is that, whatever the criminal law provides, he acted with the *bona fide* intent of assisting in bringing the terrible reign of apartheid to an end. He has been found guilty by a Court of murder and has been granted amnesty by the Truth and Reconciliation Commission. He has a right to put his case at anytime and anywhere. By saying that his act was justified by the circumstances he is not propagating violence or unlawful conduct; he is justifying his act morally. It was not even necessary for the SABC to have ensured that replies be sought to counter what he said.

The complaint was not upheld.

JUDGMENT

JCW VAN ROOYEN SC

[1] This is an appeal against the adjudication of Commissioner Linda Venter in which she found that the broadcast of the programme complained about by the appellant did not contravene the Broadcasting Code.

[2] The Complaint reads as follow:

> On 2nd March at 9-00am Siki Mgabadeli of SAFM AM Live hosted a talk show program with Robert McBride who was accompanied by another guest speaker (whose name I cannot remember). The talk show was previously well advertised on SAFM with no specific topic for discussion giving the impression that this will be a general talk show with Robert McBride. Rober t McBride is a well known senior member of the African National Congress who rose to fame when he planned and participated in the 14 June 1986 car-bombing of Magoo's Bar in Durban in which 3 people were killed and 73 injured.
>
> To put the life story and the bombing into perspective is the following extract from Wikipedia
>
> *Robert McBride (born July 6, 1963 in Durban, South Africa) is the former chief of the Metropolitan Police for Ekurhuleni Metropolitan Municipality. During the apartheid era he was a member of Umkhonto we Sizwe, the armed wing of the African National Congress, and was convicted for the bombing of Magoo's Bar / "Why Not" Restaurant in Durban, which killed 3 and injured 69 in 1986. He applied for and was granted amnesty for this and other militant actions taken during his time with MK by the Truth and Reconciliation Commission.*
>
> *Most well known was his leadership of the cell that bombed the "Why Not" Restaurant and Magoo's Bar in Durban on 14 June 1986, an attack in which 3 women were killed and 69 injured. He was captured and convicted for the Durban bombing, and sentenced to death, but later reprieved while on death row. In 1992, he was released after his actions were classified as politically motivated. He was later granted amnesty at the*

Truth and Reconciliation Commission (TRC) which provided for amnesty in return for complete disclosure of acts of politically-motivated violence.

The South African government at the time had portrayed the attack as being aimed targeted at innocent civilians, which given that the bomb was detonated on the highly popular 'Golden Mile' seafront frequented by thousands of civilians and tourists was understandable. The Truth and Reconciliation Commission (South Africa) report stated "It seems that not many, if any, of the victims in this incident were members of the South African Police. Furthermore, the criticisms directed at the quality of reconnaissance of the "Why Not Bar" might very well be valid. It may be, as was argued, that he ought to have ensured at the relevant time that the primary targets of the attack were present and therefore the concept of the proportionality of the attack and its results must be considered."[2] McBride and others were granted amnesty for the attack, although the commission did find the bombing to be a "gross violation of human rights",[3]

Given the facts surrounding Robert McBride in regards to the Magoo's Bar bombing I (like many other listeners) tuned to the talk show to hear if Robert McBride's regretted or was remorseful of his act of killing and maiming innocent civilians since he has never apologized for his act of violence towards innocent civilians.

Robert McBride did discuss the Magoo's bombing at length. However instead of expressing any remorse or regret or offer any semblance of an apology, McBride, contrary to expectations, sought to justify the killing of innocent civilians with the following claims.

1. That the killing and maiming of innocent white civilians in the Magoo's Bar bombing was justified because it was committed in the context of a liberation struggle fought by the ANC against a repressive apartheid government.

2. McBride alluded to justify the violence and killing as orders from Umkhonto we Sizwe, the armed wing of the ANC.

3. McBride justified the killing and maiming of innocent white civilians by claiming that during the Second World War the Allied forces "carpet bombed" German cities such as Dresden where many innocent civilians were also killed.

At no time during the interview did McBride express any regret or remorse about the loss of innocent lives nor did he offer any apology other than stating that he was granted amnesty by the Truth and Reconciliation.

Based on the interview with Robert McBride It is my opinion that SAFM violated the BCCSA code governing radio broadcast in regards to the following:

According to clause 3 and 4 of the BCCSA code of conduct

3. *Violence and Hate speech*

Broadcasting service licensees must not broadcast material which, judged within context

(a) contains violence which does not play an integral role in developing the plot, character or theme of the material as a whole; or

(b) sanctions, promotes or glamorises violence or unlawful conduct.

4. *(1) Broadcasting service licensees must not broadcast material which, judged within context, sanctions, promotes or glamorises violence or unlawful conduct based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.*

I state that SAFM violated code 3 and 4 of the BCCSA code of conduct based on the following arguments.

Sanctions violence

Robert McBride claim that the killing and maiming of human beings in the Magoo's Bar bombing is justified because it was done in the name of liberation struggle, the ANC, violates the BCCSA Code of conduct because it sanctions violence against other human beings as long as it is done in the name of a liberation struggle.

McBride's analogy of pointing to the history of the Allied forces carpet bombing German cities as Dresden and killing innocent civilians sanctions violence by claiming that it is justifiable to kill and maim innocent civilians if the killing and maiming of such civilians is done in the name of a recognized war or a recognized liberation struggle.

McBride's claim in justifying the killing and maiming of innocent civilians in the Magoo's Bar bombing in the name of a liberation struggle and thereafter expressing no regret, remorse or apology sanctions the violence against innocent white civilians because he is stating there is nothing wrong about committing such violent acts the violent acts are committed in the name of a liberation struggle.

Promotes Violence

The reasons McBride gave to justify the killing and maiming of innocent civilians will lead to the promotion of killing of innocent civilians if it is done in the name of a liberation cause. For example a Muslim terrorist or a Muslim fundamentalist might conclude from McBride's discussion that it is acceptable to blow up a bus load of innocent Jewish children if it is committed in the name of a liberation movement such as the PLO or Hamas fighting for the liberation of Palestine from Israel.

Glamorizes Violence.

McBride's claim in justifying the killing and maiming of innocent civilians in the Magoo's Bar bombing in the name of a liberation struggle and thereafter expressing no regret, remorse or apology glamorizes the violence against innocent white civilians because he is stating there is nothing wrong about committing such violent acts the violent acts are committed in the name of a liberation struggle.

Given the well known biography of Robert McBride, McBride's claim in justifying the killing and maiming of innocent civilians in the Magoo's Bar bombing in the name of a liberation struggle glamorizes violence because there is a perception that McBride was "rewarded" by the ANC for his acts of violence by being given "plum" government jobs.

Robert Mcbrides assertion that it is OK to kill and maim innocent white civilians because it was done in the name of the ANC liberation struggle also violates code 4:2 of the BCCSA code of conduct which states:

> *(2) Broadcasting service licensees must not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.*

Robert Mcbride's statements to the effect that it is justified to kill innocent white civilians in the cause of a liberation struggle is advocating hatred towards whites. Similar to the singing of "Kill the Boer" which the ANC deems as "struggle songs" but is regarded as hate speech by our justice system, the call by McBride to justify the killing of innocent white civilians as part of the struggle for freedom should be deemed as hate speech against whites.

The other disturbing fact about the interview with Robert McBride was the conduct of the host, Siki Mgabadeli, of SAFM. At no time during the interview with Robert McBride did Siki Mgabadeli as host and representative of SAFM restrict McBride from expressing and justifying the killing and maiming of innocent civilians in the Magoo's bar bombing. Nor did Siki Mgabadeli express any disapproval or disquiet or reservation about McBride justifying the killing and maiming of innocent civilians. Siki Mgabadeli was merely silent, when Robert McBride justified the killing and maiming of innocent civilians in the Magoo's bar bombing.

The silence gives the impression of biasness of SAFM towards the ruling party the ANC as it could be construed that SAFM condones the killing of innocent white civilians in the name of the ANC's liberation struggle. It is my opinion that the silence by the host, Siki Mgabadeli, is in contravention of the BCCSA code of conduct regarding violence and hate speech on the following grounds as it may be perceived as an approval of the violence orchestrated by McBride against innocent white civilians. The silence by Siki also encourages, promotes and glamorizes the violence and hate against innocent white civilians as long as it is done in the name of the ANC liberation struggle.

Furthermore, given the fact that the interview with Robert McBride was well advertised on SAFM Morning Talk and given the history and biography of Robert Mcbride, the interview with McBride was always going to be a very controversial issue of great public importance. If the interview is of a controversial issue of great public importance than given the conduct of SAFM Morning Talk with regards to the interview with McBride I contend that SAFM violated another BCCSA code of conduct namely code 13:1 which states:

13. Controversial Issues of Public Importance

(1) In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent program forming part of the same series of programs presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

SAFM Morning Talk in presenting a controversial interview of public importance with Robert McBride did not make reasonable effort to fairly present opposing points of views as the only view that was presented were that of Robert McBride and the guest speaker accompanying McBride. Nor was any effort made to present an opposing point of view on SAFM Morning Talk subsequent to the controversial interview with McBride. This constitutes a violation of code 13:1 of the BCCSA code of conduct.

Finally I want to ask the BCCSA to spare a moment of thought for the family of the victims of the Magoo's Bar bombing. Imagine hearing Robert McBride come on air on SAFM and justify the killing of their loved ones and not offer any regret or remorse in the talk show. Imagine the hurt and suffering these loved ones must be experiencing again. I do not wish to try and limit the freedom of speech enjoyed by the citizens of South Africa but I do wish to call for responsible journalism by the SABC in airing such contentious views that produce an immense amount of hurt and division and offensiveness in our country. Robert McBride's view justifying the killing of innocent civilians was offensive to many South Africans. While causing offense is not sufficient to limit our freedom of speech, hate speech and the sanctioning, promoting and glamorizing of violence is an offence under the BCCSA's code of conduct that warrants serious censure.

I conclude by claiming that Robert McBride's views aired on SAFM AM Live is an offence under the BCCSA's code of conduct concerning hate speech and violence. I hope that the BCCSA will find in my favor and censure SAFM so that they issue an apology and also allow me an hour (the same time Robert McBride had) on SAFM to explain why Robert McBride's justification for killing innocent white civilians should be regarded as hate speech that sanctions, promotes and glamorizes violence."

[3] The SABC responded as follows:

"**SAFM AM LIVE - VIOLENCE AND HATE SPEECH - 02.03.11; 09:00**

1. Firstly, we need to point out that the complainant has incorrectly stated that the interview with Robert McBride was broadcast on 2 March 2011. It was in fact broadcast on 1 March 2011.

2. On 2 March 2011, the complainant was given 4 min 30 seconds of airtime to debate his comments on the interview with the presenter.

3. Given this situation, we would normally request the BCCSA to first listen to the clips in question before requesting a response from us, particularly because of the selective references and arguments that the complainant has lodged without any indication that he received substantial time on the same station to state his case. The bona fides of the complainant are therefore challenged in terms of regarding his complaint as being vexatious in nature. Nonetheless, we provide the following to allow this matter to be put to rest.

4. The discussion on the day was about the imminent launch of a multi-volume publication of the South African Democracy Education Trust entitled "Road to Democracy in South Africa". The publication seeks to fill in some of the gaps in our recorded history with particular reference to the struggle against Apartheid. The two guests on the programme were Robert McBride who was scheduled to speak at the launch of the publication and Jabulani Sithole, a lecturer in Anthropology, Gender and History at the University of KZN and author of the publication.

5. The discussion revolved around the publication and generally some of the issues surrounding the struggle – armed as well as non-violent elements. Most, if not all, of what was said by the guests are facts that are a matter of record and some of it is certainly included in the records of the Truth and Reconciliation Committee (TRC).

6. Robert McBride did not, as is maintained by the complainant, "discuss the Magoo's bombing at length". This was merely one element of the interview - a specific incident that is well-documented and is in the records of the TRC, where McBride testified and was granted indemnity.

7. The logic that the complainant uses to justify his allegations of promotion and glamorization of violence and hate speech are, with respect, very far-fetched.

8. At no stage in the interview did McBride promote, sanction or encourage any listeners to go out and commit violence or hate speech – he was justifying his position at the time.

9. For the complainant to link the glamorization or promotion of violence to war-time situation (including liberation struggles that are sanctioned by the international community) is disingenuous as different rules would apply in such situations.

10. The discussion was well reasoned and argued. It was clearly acknowledged that there is a need for more understanding and a need for counselling of people from both sides of the great divide and.

11. During the subsequent interview with the complainant the next day, the presenter very aptly summed up his views as being one-sided when she said:

"*There are no holy cows on this programme, as may people vilify Robert McBride, there is an equal number of people that support him. These are the very issues we need to talk about. He has as much right to refuse to apologise for doing what he feels was fighting for a cause and that is what he feels. As much right as you have to be angry and disgusted by him* "…….

"Robert McBride did not say "go and kill people" …… By stating that he was fighting for a cause. The evidence is there in the TRC ..um.. report, that he went there and stood there and told them why he did what he did, and he did not sit and say go kill people……. I never said it was justified……"

We submit that this complaint should be dismissed as being vexatious."

[4] **The Complainant's appeal reads as follows:**"

The Adjudicator dismissed my complaint based on the following grounds:

[5] *The complainant repeatedly states that McBride neither expressed any regret or remorse about his actions nor offered any apology. In my opinion McBride was not on trial and the programme was not a court hearing where remorse and apologies are sometimes proffered.* The relevant questions to be addressed are whether McBride glamorised, provoked or sanctioned violence; whether the discussion constituted hate speech; and whether the broadcaster made a reasonable effort to fairly present opposing viewpoints in the same programme or in a subsequent programme broadcast within the same timeslot. The first point to be taken into consideration is the importance of the context in which the broadcast took place. The broader context of this programme is the reality of past and present terrorism in South Africa, which certainly is a matter of major public concern and interest. Therefore it is the prerogative of broadcasters to broadcast talk shows and call-in programmes on related topics.

[6] I will first assess the complaint with regard to Clauses 3 and 4 of the Broadcasting Code relating to material that sanctions, promotes or glamorises violence or hate speech based on race, national or ethnic origin, or colour. In my opinion McBride's remarks do not fulfil the requirements to be classified as the sanctioning, promotion or glamorisation of violence against white people. He was providing background information on the political situation at the time and clarified the motivations behind certain actions of the past, without glamorising his actions. The McGoo's Bar bombing was not discussed in length. The link between his actions of the past and his appointment in certain government positions is only a perception and any conclusions drawn with regard to this would be speculative. The complainant's assertion that McBride advocated hatred and hate speech against white people also does not fulfil the requirements to be classified as hate speech. The term advocacy implies more than just a statement during an interview - it includes elements of exhortation, encouragement, promotion, pleading, supporting or coercion. Likewise, the word incite means to urge or stir up and it could not be found that the audience was encouraged or stirred up towards committing violence against white people or to cause them harm in any way.

I appeal against the Adjudicator decision on the following grounds.

I agree with the Adjudicator that McBride was not on trial and no apology or remorse was required from McBride. However, I did not state in my complaint against SAFM / McBride that an apology or remorse was required of McBride. I stated that the justification of killing innocent

white civilians together with a lack of remorse and no apology gives me reason to claim that McBride "sanctions" violence or unlawful conduct.

The Adjudicator's main opinion is that judged within context McBride ''*was providing background information on the political situation at the time and clarified the motivations behind certain actions of the past, without glamorising his actions." and therefore "In my opinion McBride's remarks do not fulfil the requirements to be classified as the sanctioning, promotion or glamorisation of violence against white people."*

The Collins dictionary defines the meaning of "sanction" as:

1. Authorisation
2. Aid or encouragement
3. Something, such as an ethical principle, that imparts binding force to a rule, oath etc.

In my opinion it is in the context of McBride clarifying the motivation behind the killing of innocent white civilians that allows him to transgress the rule governing sanction of violence or unlawful conduct as set by the BCCSA code of conduct.
By coming on air on SAFM and justifying the killing of innocent white civilians and expressing no remorse or regret or an apology is exactly why McBride falls foul of the meaning of "sanctions". I will exemplify my opinion on the following grounds.

1. <u>Authority</u>

As McBride was a senior foot soldier of MK (<u>Umkhonto we Sizwe</u>,) and as McBride is a senior ANC member that is presently governing our country and because the ANC has not officially distanced the organization from McBride's actions in regards to the Magoo's bar bombing, McBride's justification for killing innocent white civilians sanctions violence or unlawful conduct by imparting a sense of "authority" in the killing of innocent white civilians in the name of a liberation struggle.

The perception that McBride was appointed to senior security government positions because of his role in MK further enhances the authority of sanctioning violence or unlawful conduct.

<u>Aid or encouragement</u>

The justification McBride provided for the killing of innocent white civilians, namely that it was done in the name of a liberation struggle and because he showed no regret or remorse and offered no apology gives reason to claim that McBride aids or encourages every person who may want to commit similar acts in the name of a liberation struggle.
For example a Muslim terrorist on hearing McBride's justification for killing innocent white civilians, may feel justified in blowing up a busload of innocent Jewish children because such acts are committed in the name of a justified liberation struggle namely the freedom of Palestine from Israeli occupation.

Therefore the context of McBride's interview with SAFM where he shows no remorse or regret or offers no apology and justifies the killing of innocent white civilians, even though the context is to provide background information on the political situation at the time, allows me to claim that McBride's sanctions violence or unlawful conduct by aiding or encouraging other terrorist to commit similar acts of terrorism that McBride committed.

Another example is if a famous author would come on radio and explain that in his new book he raped a lesbian as a teenager and justified this rape as a corrective rape against gays and lesbians because homosexuality is a sinful practice. Imagine if the author said without any remorse or regret or an apology he would not carry out such rape now because he is not as angry as he was when he was a teenager. Will the author of his new novel not be in breach of sanctioning violence or unlawful conduct against gays and lesbians by encouraging other persons who regard homosexuality as sinful to carry out the unlawful act of corrective rape. My opinion would state that the author, even though he was merely providing the background information on his new novel is sanctioning violence or unlawful conduct against gays and

homosexuals and my argument for McBride would be the same given the similar context of both my imaginary author and McBride.

Something, such as an ethical principle, that imparts binding force to a rule, oath etc.

Since McBride is a senior member of the ANC and by justifying the killing of innocent white civilians in the name of a liberation struggle and expressing no remorse or regret or an apology for such actions, McBride imparts an ethical principle that the killing of innocent persons is justified if the cause or the struggle is justified.
McBride imparts a rule that is contrary to all human right conventions in the world including South Africa namely that innocent civilians should not be harmed in any war or liberation struggle and therefore McBride sanctions violence or unlawful conduct by imparting an ethical principle contrary to human rights.

The Adjudicator (Dr.Linda Venter) thereafter dismisses my claim of hate speech against SAFM / McBride on the following grounds:

"*The complainant's assertion that McBride advocated hatred and hate speech against white people also does not fulfil the requirements to be classified as hate speech. The term advocacy implies more than just a statement during an interview - it includes elements of exhortation, encouragement, promotion, pleading, supporting or coercion. Likewise, the word incite means to urge or stir up and it could not be found that the audience was encouraged or stirred up towards committing violence against white people or to cause them harm in any way. [7] In my opinion it is clear that it was not McBride's intention to incite hatred or violence, but simply to elucidate his actions at the time and to offer his view regarding the publication under discussion.*
I disagree with the Adjudicator on the following grounds:

In a BCCSA judgement of Polakow vs. Radio Islam Prof Kobus van Rooyen stated:

> *[3] Insofar as hate speech is concerned, there is no geographical or time limit: hate speech is hate speech. It would, accordingly, be no defense for a South African t o argue that he or she did not express hate against a South African group based on race or ethnicity. Of course, the absence of a finding of incitement to cause harm would follow more readily when it appears that the group which is attacked lives in a far corner of the earth and that harm would not be done. But that would depend on the facts before us. Insofar as hate speech is concerned, a likelihood that violence is to follow upon the words uttered is not required. uttered must constitute incitement to harm. Incitement does not, in law, require that action should follow. 5 In Human Rights Commission of South Africa v SABC 6 we held that " harm "is not limited to physical harm and that if it is likely that words could lead to fear or a related psychological state, it would justify a finding of hate speech.*

In my opinion McBride's utterances that innocent whites were killed in the name of a liberation struggle and the fact that the ANC which is the ruling governing party of the country has not distanced itself from McBride's statements justifying the killing of innocent white civilians, nor has the ANC refuted any of McBride's assertion justifying the killing of innocent white civilians, must lead to fear and anxiety amongst white South Africans that the government sanctions violence or unlawful conduct against white South African citizens.

Added to McBride's statements justifying the killing of innocent whites in the name of a liberation struggle is the fact that many prominent ANC , PAC, Cosatu and other political party politicians are on record stating that the liberation struggle is not over. In the context of these statements, would it be justified for these politicians to kill innocent white civilians because it was justified by McBride in the name of a liberation struggle? McBride's utterances together with the rhetoric from many ANC politicians that the liberation struggle is continuing must add to the fear and anxiety amongst white South Africans. It is in this context that McBride's

statements justifying the killing of innocent white civilians transgresses the BCCSA rules governing hate speech as expounded by Prof Kobus van Rooyen.

Concerning my complaint about

13. Controversial Issues of Public Importance

(1) In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent program forming part of the same series of programs presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

The Adjudicator dismisses my claim on the following grounds:

[8] *With regard to Clause 13, which relates to programmes where controversial issues of public importance are discussed, it should be noted that the programme in question was a call-in programme during which a number of callers were given the opportunity to present their viewpoints. By determining that the programme dealt with a controversial issue of public importance, does not necessarily mean that the broadcaster had to invite another person on the programme to present a different viewpoint. The opinions of the callers already provided balance and different viewpoints. In addition, the complainant himself was afforded adequate time to state his view during another* broadcast of the same programme in the same timeslot the following day. The presenter also specifically mentioned that there are equal numbers of people who support McBride and who vilify
him.

I reason the Adjudicator provides dismissing my complaint is incorrect based on the following grounds.

- The Adjudicator states that the broadcaster does not necessarily have to invite another person on the program to present a different point of view but the Adjudicator provides no insight or examples on how the broadcaster should make reasonable effort to fairly present opposing points of view.

- The Adjudicator is of the opinion that the callers and SMS's provided balance and differing viewpoints. However the Adjudicator fails to recognize that the callers and SMS's are not provided carte blanche access to the programme but that these callers and SMS's are screened according to the whims and fancy of the broadcaster handling the intake of these callers and SMS's. These screenings of callers and SMS's will not constitute a "reasonable effort to fairly present opposing points of view" as per the BCCSA's code of conduct.

- The Adjudicator states ", *the complainant himself was afforded adequate time to state his view during another broadcast of the same programme in the same timeslot the following day."* Yes, I agree that I was afforded time on an open line but the content of my discussion had nothing to do with my complaint to the BCCSA regarding McBrides sanctioning of violence and unlawful conduct but rather about the conduct of Siki Mkabadeli the presenter of SAFM hosting Robert McBride. Therefore the time provided to me does not constitute "reasonable effort to fairly present opposing points of view" as per the BCCSA's code of conduct.

- In the time given to me to air my views on an open line, Siki Mgabadeli, as representative of SAFM is on record stating that SAFM often allows me leeway to state my opinion which many regard as hate speech. She further states that SAFM by allowing me the time to express my hate speech would provide the same opportunity to McBride to express his opinion, even if that speech is hate speech. This remark of Siki Mgabadeli would constitute a breach of the rules governing broadcasters

adherence to the BCCSA's code of conduct regarding sanctioning of violence and unlawful conduct and hate speech.

- The crux of the question is "Does an hour talk show program discussing an issue of great public importance and is highly controversial and where the presenter of such a programme allows less than ten minutes of screened callers and SMS's constitute a reasonable effort to fairly present opposing points of view as per the BCCSA's code of conduct? In my opinion this is not a reasonable effort to fairly present opposing points of view as per the BCCSA's code of conduct.

Finally, the Adjudicator stated:

"The complainant is aggrieved that the presenter kept quiet and did not express any disapproval regarding McBride's statements. The presenter did not keep quiet, but merely fulfilled her role as an unbiased facilitator. In a programme of this nature it is not expected from the presenter to assume the role of active participant or commentator."

I disagree with the Adjudicator. I expect the presenter of any talk show to be unbiased yet at the same time to be instructive and implement the BCCSA's code of conduct governing radio content. For example if I came on air in any talk show and stated the following:

- I am angry and aggrieved at service delivery and therefore we should kill President Zuma
- I am an angry Muslim aggrieved at the bondage of Palestine and I feel like taking my pistol and killing my Jewish neighbor.
- I think corrective rape is proper and called upon our citizens to rape gays and lesbians in order to change their sinful behavior.

I would not expect the presenter of any talk show to be silent and unbiased in regards to my examples of violence and hate speech above. I would expect the presenter to be biased towards the BCCSA's code of conduct regarding violence and hate speech and I would expect the presenter to assume a role of active participant and commentator in implementing the BCCSA's code of conduct and point out that the above examples are hate speech or the promotion of violence and should therefore not be allowed on air. I would expect nothing less of the presenter of any talk show or any other radio program.

Conclusion:

I humbly request that the Adjudication Committee of the BCCSA consider the merits of my arguments against the Adjudicator Dr. Linda Venter and find in my favour to appoint a Tribunal of the BCCSA where I can discuss at length why the Tribunal should find in my favour of my complaint against SAFM / Robert McBride."

[5] We have studied the Appellant's grounds of appeal and argument during the hearing. He has clearly taken considerable trouble in reading up the relevant case law and also the Code of Conduct. His approach is to our minds, with respect, not in conformity with freedom of speech, which must be given a generous application according to the Constitutional Court.[1]

[1] *Laugh It Off Promotions CC v SAB International (Finance) BV t/a Sabmark International (Freedom of Expression Institute as Amicus Curiae)* 2006 (1) SA 144 (CC).

[6] In balancing the relevant rights weight must be given to the right of Mr Mc Bride to put his view. It was not necessary for the anchor to have criticised him for his view. His view is that, whatever the criminal law provides, he acted with the *bona fide* intent of assisting in bringing the terrible reign of apartheid to an end. He has been found guilty by a Court of murder and has been granted amnesty by the Truth and Reconciliation Commission. The Constitutional Court has held that it is not defamatory to refer to him as a murderer. Nevertheless, he has a right to put his case anytime and anywhere. By saying that his act was justified he is not propagating violence or unlawful conduct; he is justifying his act morally. It was not even necessary for the SABC to have ensured that replies be sought to counter what he said.

[7] We agree fully with the finding of Commissioner Venter and the appeal is dismissed.

PROF JCW VAN ROOYEN SC
CHAIRPERSON

Commissioners Makeketa, Mdlulwa, Nkwane and Co-Opted Member Linington concurred in the above judgment of the Chairperson.