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CASE NUMBER: 03/2011

DATE OF HEARING: 10 FEBRUARY 2011

O KEBONEILWE **COMPLAINANT**

v

SABC2 **RESPONDENT**

TRIBUNAL: **PROF JCW VAN ROOYEN SC (CHAIRPERSON)**
DR LYNDA GILFILLAN
MR B MAKEKETA
PROF G OLIVIER

For the Complainant: The Complainant was invited but did not attend.

For the Respondent: Mr. Fakir Hassen: Acting General Manager: Special Projects accompanied by Ms Veronica Barnard, Compliance Officer of the SABC assisted by Mrs. Nomsebenzi Kubheka, Programme Acceptance, SABC2.

Hate speech – broadcast insert wherein a presenter used the term "Makula" (Coolies) to refer to people of Indian descent. The use of the term "Makula"(Coolie) is found to amount to hate speech. Keboneilwe vs. SABC2, Case No: 03/2011(BCTSA).

SUMMARY

A broadcast by the Respondent wherein a programme presenter used the word "Makula" (Coolies) to refer to people of Indian descent. The Tribunal held that the word "coolie", given its historical apartheid context, amounted to a serious

impairment of dignity by way of hate speech based on race. The tribunal also found that the word "Makula" is a misnomer which has crept into African languages and it is still derogatory and demeaning and thus flies in the face of Constitutional values of dignity and equality. The complaint was upheld. Since corrective steps have been taken by the SABC, no sanction was, however, imposed.

JUDGMENT

BRIAN MAKEKETA

[1] The Registrar received a complaint from Mr. O.Keboneilwe about the broadcast of an insert in which a presenter, during a programme line, used a word *Makula* (Coolies) to refer to people of Indian descent.

[2] The Complaint read as follows:

> "I would like to log complain against SABC2 program Life24/7 Sunday 5th December 2010 for using the derogative *Makula* (coolies) when referring to Indian communities. The word [was using on] introduction of the programme line by a presenter in Sesotho. I don't understand why the broadcaster, the editors and everybody concern can allow such language in our country."

[3] The SABC responded as follows:

> "During the introduction to the story of South Africa celebrating 150 years of the Indian people living and being part of South Africa, the presenter used the term ['*makula*']. We do agree with the complainant that the use of the term is derogatory when used in an offensive manner. However, we believe this was not the presenter's intention. When judged in context, there was no advocacy of hatred based on race or ethnicity, nor was there any incitement to cause harm."

[4] The Complainant replied as follows:

> "Thank you very much for the update. If it is not a bother to you sir can you please convey this message to the SABC: I am not after retribution, or having anything against the lady. I just ask for little consideration, respect and regard to others. Let it not be that the young lady is to face the backlash of the whole debacle on her own, but also those who are responsible for allowing this to be broadcast should also be held responsible. The road to hell is built with good intentions."

[5] Clause 16.3(c) of the Broadcasting Code prohibits the broadcasting of the advocacy of hatred based on race that constitutes incitement to cause harm. Apartheid led to an abominable categorization of human beings into classes where white people were regarded as supreme and black, Indian and coloured were regarded as signifying the races which would serve white people and never be equal to them. This led to legislation which ensured that black people, Indians and coloured people would not have a vote and not be in Parliament. The political voice of Black, Indian and coloured people was silenced and men and women who dared to challenge the *régime* were often incarcerated without a trial. One of the results of apartheid was that derogatory terms were used in referring to black, Indian and coloured people. Although the term "coolie" would seem to have not been used in India in a derogatory manner but as describing persons who did manual work, the word "Coolie" gained a derogatory meaning in Apartheid South Africa.

[6] The word "Coolie" in its derogatory form was deeply imbedded in Apartheid South Africa. Many Whites readily referred to Indians as Coolies and thereby relegated them to the sphere of unwanted, third-grade South Africans. The mere use of the word has an all-encompassing derogatory tone to it and, even the mere mention of it, within the South African context, advocates and thus projects the idea of hatred based on race. It inflicts harm in the sense that at least psychologically it debases and thus harms the Indian section of the South African community. The Constitutional Court has, in several of its judgments, emphasised the need for the protection of minority groups. Although the Indian section of the South African community is quite large, it is a minority which is entitled to special protection. Compare *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC); *Prince v President Cape Law Society, and Others* 2002 (2) SA 794 (CC) at par [112] where the majority states:

> "The fact that they are a very small group within the larger South African community [the Court was referring to members of the Rastafarian

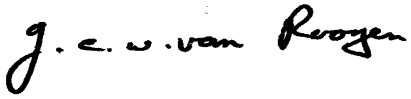
> religion] is no reason to deprive them of the protection to which they are entitled under the Bill of Rights. On the contrary their vulnerability as a small and marginalized group means that the Bill of Rights has particular significance for them. The interest protected [in that case by s 15(1) and s 31 of the Constitution] is 'not a statistical one dependent on a counter-balancing of numbers, but a qualitative one based on respect for diversity'."

[7] It is important to examine the etymology of the word "Makula" (Coolie) in African languages. In African languages it is proper and respectful to refer to people according to the countries they come from, and accordingly people from India are referred to as "MaIndia" ,or people from the US as "MaAmerika" or people from Europe as "MaEuropa". Thus the proper terminology used in Sotho and Nguni languages for people of Indian descent is "MaIndia" in Sotho or "AmaIndia" in Nguni languages. Now, years ago when there was little interaction between different race groups during the apartheid South Africa, for most African people the first interaction with other foreign races was when people came to work in the mines in Johannesburg. These interactions led to people wanting to know who the other people were, especially those who were different from them. Logic dictates that, especially for African people, they would have heard their white bosses referring to people of Indian descent as "Coolies" and would have thought that that was the right word to use, despite its derogatory meaning – which the users may not have been aware of at the time. When the African miners returned to their homes, they would adapt the usage of the word "Coolie" into their different languages. It is the character of African languages to take foreign words as they are and adapt them, especially in cases where they do not exist. Hence in Sotho languages the word "Coolie" became "Makula". Despite concerted efforts to educate people about the derogatory meaning of the term "Makula" (Coolies), the word is used to this day. But that does not make it right.

[8] However, one would expect that in a professional environment like the broadcasting environment, great care would be taken to keep up the standards of the languages in the country, and that people would understand that, as in English, colloquial and derogatory words are not at all to be used on air or in a professional set-up. In the South African context, the use of the word "Coolie" is not only demeaning but also derogatory. Commissioner Viljoen, in his judgment of S. Naidoo v 94.7 Highveld Stereo, case number 24/2010, on the use of the name "Coolie", encapsulates very well the Constitutional Court's jurisprudence when he says, *condemning the use of the term "coolie" accentuates the importance of the recognition of diversity and the protection of a minority in the pursuit of national unity and reconciliation.* Something which our young democracy is trying to achieve.

[9] The use of the term "Makula" (coolie), in the South Africa context, is still a derogatory and disrespectful misnomer used against people of Indian origin and should never be used in a professional broadcasting environment; in fact, South Africans should avoid altogether the use of this word. Thus, I conclude that the use of the word "Makula" (coolie) in the insert amounted to hate speech as defined in clause 16.3(c) of the Broadcasting Code.

In the result the complaint is upheld. However, since the SABC has said, during the Tribunal session, that it agrees that the use of the term "Makula"(Coolie) is derogatory and that they have since taken steps internally to correct the error and to make sure that it does not happen again, no sanction is imposed.



PROF KOBUS VAN ROOYEN SC
CHAIRPERSON

The Chairperson Prof van Rooyen, Commissioners Gilfillan, and Olivier concurred in the judgment of Mr Makeketa.