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CASE NO: 27(2)/2011

In the matter between

MAHAMED **APPLICANT**

and

SABC (SAFM) **RESPONDENT**

Rescission – application to rescind a previous decision not granted – decision taken by Chairperson who is authorised by the Rules to rule on an application to extend a time period in the Rules. Fact that the application was directed to the Deputy Chairperson irrelevant in law. Mahamed v SABC (case 27/2011(4)

JUDGMENT

JCW Van Rooyen

[1] The present matter has gone through four stages of the process at the BCCSA. Firstly an adjudicator of the Commission considered the complaint of the complainant. She did not uphold the complaint. Secondly, an appeal against that decision was heard by a Tribunal, which also dismissed the complaint and thus also did not uphold the appeal. Thereafter the Applicant filed an application to me for leave to appeal to an Appeal Tribunal of the Commission. That application was not upheld. The Applicant then filed a second application for leave to appeal as he was entitled to do. Such an application would, as per a resolution of the AGM of the Commission, be referred to the Deputy Chairperson of the Commission. This application was, however, a day late and, after the Registrar brought this to the attention of the Applicant he added a paragraph in which he applied for an extension of the period within which he could

file such an application. This application was not upheld by me and reasons were given. All the judgments are available on the website of the Commission.[1]

[2] The Applicant has now, via the Registrar, filed an application to me to rescind my judgment on the basis that he had, in his application, referred to the Deputy Chairperson as the person who had to consider his application for extension. His reasons read as follows:

> "I have noted your reply and I wish to state for the record that I disagree with your opinions regarding the rules of the BCCSA and the law in general.
>
> I have, in good faith, through your verbal direction addressed the matter of condonation to the Deputy Chairperson of the BCCSA. You, as the Registrar of the BCCSA had a duty under law and under the rules of the BCCSA to inform me the correctness or incorrectness of my condonation application. This would have allowed me my right to correct my condonation application, if I chose to do so.
>
> Instead of choosing this simple lawful procedure you chose to instead direct my condonation and all the correspondence in this regard to the Deputy Chairperson in contravention of the rule 5.1 which states specifically that it is the Chairperson of the BCCSA who is given the authority to extend any time period. In fact this contravention is specifically pointed out by the Deputy Chairperson of the BCCSA when he states in an e-mail to you on the 28th July 2011 that it is the Chairperson of the BCCSA and not the Deputy Chairperson who has such authority. This e-mail indicates that it is the Registrar that misdirected the condonation application in the first place.
>
> I repeat my contention. The Chairperson of the BCCSA can only act on a matter if in good faith I had directed for him to act on the matter. If I requested the Deputy Chairperson to act in the matter of my condonation than the Registrar of the BCCSA cannot arbitrarily assign the matter to the Chairperson without my rights being unlawfully violated, both under the BCCSA's constitution and under the South African law.
>
> It is also my contention that the Chairperson has the right to rescind the decision of not granting me a condonation if it has come to his attention that the procedure of the BCCSA's constitution has been flagrantly abused or violated. Such authority by the Chairperson has been previously applied in my complaint when it was discovered that I applied for an appeal against the Tribunal beyond the five day limit because of a mistake by the BCCSA in their website citing the rules of the BCCSA. (refer to my e-mails referring thereof).
>
> I would like to resolve this matter in an amicable and consultative manner without having to resort to costly litigation through the High Court to establish my rights to a fair and just hearing of the BCCSA of my complaint against SAfm / Robert McBride. In the interest of all the parties involved I therefore ask that you consider my request and would appreciate a reply thereof as soon as possible."

[1] All these judgments will also, in due course, be available on LexisNexis. More than 350 judgments of the Commission are available on LexisNexis.

[3] For purposes hereof I will accept in favour of the Applicant that I am entitled to consider his application to rescind. The answer to this application is that it is irrelevant to which officer within the BCCSA a complaint or an application is directed. All correspondence goes to the Registrar and she must act within the Rules of the Commission. Those Rules lay down that an application for extension must be heard by the Chairperson of the Commission. Only if he or she is not available to hear such an application, the Deputy Chairperson is authorised to deal with an application of this nature (see BCCSA Constitution clause 6.2). In the present case I was available to decide this application. The matter was, accordingly, referred to me by the Registrar and I decided the application as I was bound in law to do.

[4] There are, accordingly, no grounds on which the previous decision may be rescinded. The Rules – in fact the very rule after Rule 4 of the Procedural Rules which deals with appeals – lay down that the *Chairperson* must consider the application for an extension of a time period laid down by the Rules. Had the Deputy Chairman decided the application for an extension he would have acted *ultra vires* and that decision would have been void *ab initio.* In such a case I would have been bound in law to have ruled on the application, in spite of the decision by the Deputy Chairperson.

[5] There is, accordingly, no ground upon which I may rescind my previous decision not to grant an extension. The mere fact that the officer to whom a matter is addressed is not the officer to whom a matter should be addressed is irrelevant in so far as the merits of the application are concerned.

The Application to rescind is not upheld.

JCW VAN ROOYEN
CHAIRPERSON

5 August 2011