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CASE NUMBER: 29/2011

DATE OF HEARING: 8 AUGUST 2011

DAWOOD

COMPLAINANT

vs

HEART 104.9 FM

RESPONDENT

TRIBUNAL: Prof Kobus van Rooyen SC (Chairperson)
Prof Henning Viljoen (Deputy Chairperson)
Dr Lynda Gilfillan
Dr Linda Venter
Ms Zenobia Africa (Co-opted)

Complainant: The Complainant was unable to attend.

For the Respondent: Mr Gavin Meiring, Managing Director, and Mr Vernon Adams, Programme Manager of Heart 104.7 FM.

Complaint of hate speech – inclusion of reference to Quran in joke – feeds off negative Islamist stereotype – in the context of light-hearted show regarding excuses for being late for work – not deemed to be hate speech – no advocacy of hatred based on religion, and no incitement to cause harm – no contravention of the Code and complaint not upheld – Dawood vs Heart 104.9FM, Case no: 29/2011(BCCSA).

SUMMARY

A complaint of hate speech was received regarding a joke told in the context of a programme about excuses for being late for work. The joke describes a man going to a local mosque for advice, and instead being beaten up with the Quran. The joke is satirical, and formed part of a comedy show where situational jokes were told. While the BCCSA warns against the mockery of religion, the joke as it was told in the radio show does not exceed normal bounds of tolerance. It cannot be construed as hate speech. There was no advocacy of hatred based on religion, and there was also no incitement to cause harm, the two requirements for the finding of a hate speech contravention. There was thus no contravention of the Code of Conduct and the complaint was not upheld.

JUDGMENT

LYNDA GILFILLAN (Commissioner)

[1] The BCCSA received a complaint against Heart 104.9fm (the Respondent). The complainant, Zorina Dawood, alleged that the presenter, Phat Joe, slandered the Islamic religion during a broadcast of the Morning Show on 31 March 2011. According to the Complainant, the phrase constituted hate speech.

[2] **The complaint read as follows:**

“Yesterday, 28th February, at about 0740, Phat Joe insulted Islam and our Holy Quran. He did it on his top 5 that he does every morning. It was about excuses to give your boss when you are late on a Monday morning.

I cannot remember his exact words but the gist of it was that a man thought Islam was a peaceful religion so the man decided to go to the local mosque for some advice but when he arrived there, instead of being given the advice, he was beaten within an inch of his life with the Holy Quran.

I know that Joe is one of Cape Town's most controversial dj's and this is going too far. His behaviour cannot be condoned. No one has the right to slander another's religion and this for station ratings! It's unacceptable!
I want him to publicly apologise to all Muslims.

I would also like to add that he asked his co-presenters - Julian Naidoo and Nick Feinberg, to comment on his remark but they just remained quiet.

I hope that there is a speedy response to my complaint and that Islam be given the respect it deserves.”

[3] **The Respondent stated the following:**

"We respond as requested in terms of clause

- 4.(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.

Heart 104.9FM contends that the presentation of the feature in question in no way breached this clause as it did not in context incite imminent violence or advocate hatred that is based on religion that constitutes institutes incitement to cause harm.

In context of the regular produced feature it is our contention that the Phat Joe Top 5 in its regular output is understood by the audience to be a controversial and provocative feature, which has inspired social debate and commentary of a nature that highlights social issues and draws attention to controversial.

Phat Joe has in satirical and comedic fashion drawn attention to issues surrounding religious prejudice, racism, women abuse and politics through the use of this feature. It is often this exaggerated type of situational comedy that drives the show host to gain team, audience response and discussion on matters that are not often addressed in common conversation.

In this Top 5 Joe goes as far as even stating that one of the top 5 excuses you can use for being late for work is "you were in the hospital because apparently the woman you were stalking thought pepper spray was foreplay" and the number one excuse for being late for work was "you had to drop the wife off at the strip club and there is lots of traffic that side", all of these are exaggerated statements that the presenter was using to provoke reaction from his audience."

- [4] At the hearing, the commissioners listened to a clip of the programme. The joke that was complained about formed part of a rapid-fire series of comments in a sketch involving the "top five" excuses people make for being late for work. Among these were two jokes involving pepper spray and sexual foreplay, and a husband-and-wife scenario involving a strip club.
- [5] The latter two jokes had a gender component, while the third, i.e. the one complained about, targeted religion. The Tribunal had to decide whether the joke complained about constitutes hate speech, and, accordingly, whether it constitutes the advocacy (i.e. the promotion) of hatred, or incitement (i.e. provocation or rousing) to cause harm.
- [6] On examination, it was decided that the joke complained about is a form of verbal slapstick, with an element of satire. It is based on an outrageous situation where a

person at a mosque replies to someone's request for advice by using the Quran as a weapon to severely beat the person who has asked for the advice. The person is, as a result of this incident, late for work. Ironically, religions – and their holy books – are supposed to be vehicles of peace rather than violence. The joke is, thus, an attempt to poke fun at religious hypocrisy.

- [7] To avoid accusations of disingenuity, it is necessary to mention in my judgment that the joke hinges on the perception that, while Islam itself may preach peace, some of its adherents resort to violence. The latter is, of course, a stereotype, and like all stereotypes it may be false and even dangerous. However, the joke depends for its effect on irony and the juxtaposition of peace and violence, and as such it conjures up the occasional hypocrisy not only of Islam, but of all religions when it comes to practising what they preach. Of course, Phat Joe's audience would not necessarily be aware of any such conscious intentions on the part of the presenter, but the joke does depend, for its impact, on listeners having some familiarity, at least, with the notion of religious hypocrisy.
- [8] For all the controversy surrounding Islam, and the sensitivity of many of its adherents, the joke is, in the final analysis, not slanderous. It merely uses the example of Islam in order to satirise hypocrisy. Had the word "Bible" been used instead of "Quran", and had the situation been set in a church rather than a mosque, the intention and impact would have been the same. The point was, clearly, to expose religious hypocrisy, without targeting Islam as a religion.
- [9] After considering the context in which the words complained of were used, the Tribunal considered whether there was a contravention of the hate speech clause as provided for in clause 4(2) of the Code of Conduct. The requirements for hate speech are that there must be the advocacy of hatred, based on race, ethnicity, religion or gender. Furthermore, there must be incitement to cause harm.¹

¹ See *Suliman & Others vs 5 FM*, where a clear distinction is drawn between the "advocacy of hatred" and the mere expression of "disrespect". Case Number 20/2005.

[10] The Phat Joe breakfast show is typical of shows where presenters deal with controversial and often provocative material, and frequently do so in an irreverent manner. Religion is a particularly sensitive area, and religious jokes may be considered bad taste by many listeners. However, while the broadcast may well have been in questionable taste, it does not amount to hate speech, since there was no advocacy of hatred and no incitement to harm. In conclusion, therefore, the joke told on the Phat Joe show does not constitute hate speech. Essentially, the focus of the joke is on hypocrisy, and as such it does not constitute an attack on religion per se.

In the result, there is no contravention of the Code, and the complaint is not upheld.



**JCW VAN ROOYEN SC
CHAIRPERSON**

The Chairperson and Commissioners Viljoen and Venter, as well as Co-opted Member Africa, concurred with the above judgment by Lynda Gilfillan.