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Case No: 06/1998

Date of Hearing: 30 January 198

F BARNARD

Complainant

vs

SABC

Respondent

In regard to the programme:

**“DEATH OF A GANGSTER” ON SABC
TELEVISION**

Commission:

**Prof Kobus van Rooyen S.C (Chair)
Prof Lulama Chakela (Alternate Chair)
Mr Sam Mphuthi**

For the Complainant:

**Mr P du Plessis and Ms Marlow from David H
Botha, Du Plessis and Kruger, Johannesburg**

For the Respondent:

**Mr Malan Otto, General Manager, Central
Complaints Office, SABC and with him Ms
Esthea du Toit from the Legal Department,
SABC**

OPSOMMING

Die Klaer, ‘n verhoorafwagende in twee aangeleenthede: van die moord op Dr David Webser in die Transvaalse Provinsiale Afdeling en van verskeie klagtes ten aansien van bedrog voortspruitende uit verskeie diamante- en ander transaksie, asook ‘n roofsaak te

Klerksdorp waar die bewering een van roof van R10 miljoen se diamante is. Die Klaer was onsteld oor die feit dat van die staatsgetuies aan 'n program "Death of a Gangster" op 18 Januarie 1998 deelgeneem het. Van die getuies wat in die Klerksdorp saak getuig het, het hulle getuienis en ander

inkriminerende aspekte tydens die program behandel terwyl dit wel bekend is dat die saak steeds nie afgehandel was nie. Gedurende 'n onderhoud wat deel vorm van die program waaroor gekla is, is daar ook nie geleentheid aan Klaer gegee om die aantygings teen hom te wele nie. Klaer voel oor die algemeen ook benadeel, aangesien hy vrees dat die verskillende regbanke wat sy sake moet verhoor, beïnvloed kon word deur hierdie program.

Die Uitsaaiklagtekommissee het beslis dat hy nie oor die vraag of die sub judice reel verbreek is uitspraak kan gee nie aangesien die sub judice reel nie ingesluit is by sy Kode nie. Die Kommissie het egte eenparig bevind dat die program onbillik teenoor klaer was omdat dit nie aan Klaer die geleentheid gegee he tom te antwoord op aantygings wat teen hom gemaak is in die program nie. Die Kommissie het die SAUK gelas om hierdie bevinding oor sy TV Nuusdienste oor te dra.

JUDGMENT

On the 18th January 1998, the Respondent broadcaster broadcast a programme "Death of a Gangster" which dealt with the death of a Mr Goosen. Complainant took part in an interview, which formed part of this programme. However, when the programme was broadcast, it appeared that several of the state witnesses in two trials against Complainant gave their views, which incriminated Complainant.

Mr Jacques Pauw who produced the programme was called as a witness by the Respondent. Since his evidence of an interview with Complainant could contravene the sub judice rule, the Chair of this Commission ruled that the hearing, in so far as Mr Pauw's evidence was concerned, would be heard in camera.

The question, which arose for our decision, was whether it was unfair to Complainant not to have included his views on the death of Dr David Webster so as to counter the views expressed by state witnesses interviews in this programme.

This Commission came to the conclusion that it was thoroughly unfair to Complainant not to have included his views.

It should be added that if this Commission had jurisdiction on the question of the contravention of the sub judice rule, this rule would seem to have been contravened in this programme. Matters which had a direct bearing on the pending and later hearings were discussed, especially in regard to the murder case. State witnesses who were to give evidence in the murder trial directly gave an opinion that Complainant was guilty of having murdered Dr Webster. For us it is irrelevant whether Complainant would be found guilty or not: he should have been afforded the opportunity to answer the allegations. Of course, in such a case, he would also have contravened the sub judice rule and could possibly have been found guilty of contempt of court. Nevertheless, he should at least have been given the choice to answer these allegations which were, in any case, part of the programme.

We have accordingly come to the conclusion that the Complainant should have been afforded the opportunity to answer the allegations against him and that this omission of the Respondent amounted to a contravention of clause 7.2.2 which provides as follows:

“A person, whose views have been criticized in a broadcasting programme on a controversial issue of public importance, shall be given reasonable opportunity by the broadcasting licensee to reply to such criticism, should that person so request.”

Clause 7.2.1 was also contravened. This clause provides that in presenting a programme in which controversial issues of public importance are discussed, a broadcasting licensee shall make reasonable efforts to fairly present significant points of view either in the same programme or in a subsequent programme forming part of the same series within a reasonable period of time and in substantially the same time slot.

Since it was impossible for Complainant, who was in prison at the time, to take part in such a subsequent programme, the only sanction which this Commission could impose was to direct the SABC to broadcast this finding.

JCW VAN ROOYEN SC
CHAIRPERSON