BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA

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CASE NO: 13/1997

Date of Hearing: 14 March 1997

FLAME LILY FOUNDATION **Complainant**

vs

SABC **Respondent**

RE: TRC REPORT OF 9 FEBRUARY 1997

Commission: Prof Kobus van Rooyen S.C. (Chairperson)
Rev Barnard Mokwena (Viewer Representative)
Rev Danie du Toit (Broadcasting Representative)

The Complainant was represented by Col (rtd) AHG Munro

The SABC was represented by Mr Malan Otto, General Manager of the Central Complaints Office and Ms Esthea du Toit, from the Legal Department, SABC.

SUMMARY

"The Broadcasting Complaints Commission of South Africa handed down judgment on a complaint from the Flame Lily Foundation, which has ex- Rhodesians as its members. The Foundation complained about a statement by Mr Max du Preez during the TRC Report, which deals with the activities of the Truth and Reconciliation Commission. The statement complained about was: the truth, as we now know, is that this repulsive form of killing (that is,

necklacing or the incineration of people doused in petrol) was first started by white Rhodesian security forces in the 1970's and then brought to South Africa by the Security Police".

The Commission granted the SABC the opportunity to file substantiating evidence. After having studied the additional evidence, the Commission came to the conclusion:

(a) that there is no evidence that the SABC or Mr Du Preez acted from malicious motives, as charged by the complainant;

(b) that, however, they have not provided the Commission with evidence that alleged atrocities in the Rhodesia of the seventies, included the incineration of live people by necklacing or by the setting alight of people after having doused them in petrol; and

(c) that, accordingly, the statement that these forms of incineration of live people originated from the Rhodesian Security Forces was not substantiated in the documentation before the Commission.

The Commission accordingly held that the SABC contravened the BCCSA Code by having broadcast a statement which was not adequately sourced or shown to have been adequately sourced before the Commission.

The complaint was accordingly upheld".

JUDGMENT

I. Introduction

During the "TRC Report" broadcast on Sunday evening 9 February 1997, several aspects of the work of the Truth and Reconciliation Commission were reported on by way of clips from the hearings, archive material of atrocities allegedly committed by the Police and the Army as well as a seemingly frenzied crowd and unknown offenders. The commentator, the well-known journalist and producer Mr Max du Preez, commented on the different scenes portrayed. One of the items dealt with, described by him as the first TV broadcast of a "necklacing", was the incineration of Sanki Skosana, who was incinerated by an apparently frenzied crowd who believed her to have been an informer. The balance of evidence later on showed that she had not been an informer. Clips from the TRC hearing where her sister gave evidence about the atrocity committed against here were then broadcast. A scene showing her being set alight was also shown for a few seconds.

After this item Mr Du Preez said the following:

"Between September 1984 and August 1989, 771 people were necklaced or doused with fuel and burnt to death. The myth perpetuated by the State then was that this was an example of African brutality. ***The truth as we now know is that this repulsive form of killing was first started by white Rhodesian Security Forces in the 1970's and then brought to South Africa by the security police.."***

II. The Complaint and the BCCSA Code

A few days later the Flame Lily foundation, which has ex-Rhodesians as its members, filed a complaint at the BCCSA against the above statement.

Section 2.3 of the Code, which deals with the reporting of news, provides as follows:
Only what may reasonably be true having regard to the source of the news, may be presented as facts, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinion, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

Section 3, which deals with comment, provides as follows:

Comment shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair and balanced account of all available facts which are material to the matter commented upon.

Since the present Constitution of the Republic is also applicable, where appropriate, to horizontal relationships, the BCCSA also regards itself bound by the freedom of expression fundamental right in section 16 of the Constitution. Our Code must, accordingly, be interpreted in the light of this fundamental right and the limitation clause in section 36 of the Constitution.

"Section 36 of the Constitution of the RSA provides as follows:

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including - (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights".

At the hearing the complainant's representative, Col (rtd) Munro who was a member of the senior staff of the Rhodesian Defence Force in the seventies, denied all knowledge of "necklacing" or dousing in petrol by the Rhodesian Security Forces.

He formulated the complaint as follows:
As an organisation which represents the interests of former Rhodesians who have settled in South Africa, we take strong exception to this statement and we wish to lodge a complaint against the

SABC for what we believe to be misrepresentation of the truth.

We contend that the statement referring to "white Rhodesian Security Forces" above is both untrue and malicious. Necklacing (ie, the burning to death of selected individuals, with the aid of inflammable, liquid and/or motor tyres) was never practised (let alone started) by the Rhodesian Security Forces, black or white, and would have resulted in prosecution of the perpetrators of such a dastardly act if it were ever discovered. The allegation cast doubt on the integrity of all former members of the Rhodesian security forces, and causes distress for their families and friends.

Mr Du Preez gave no indication as to the source of this "truth" that he says "we know now". Neither was there any indication in the programme that the "truth" came from the testimony presented to the Truth and Reconciliation Commission.

Please would you let me know what action will be taken to verify the statement made by Mr Du Preez. Should the SABC be unable to satisfactorily substantiate the accuracy of the statement, please would you advise me as to what appropriate steps should be taken by the SABC to rectify the matter".

At the hearing a statement by Mr Du Preez was handed in and it reads as follows:

The essence of the remarks in contention was about the use of fire to kill opponents or to destroy bodies. The myth perpetuated in South Africa was that the use of fire originated in a primitive African belief that the victim would only die if his soul was also destroyed. That, the urban legend went, could only be done by fire.

My remarks were aimed at debunking this myth. That is why I stated in two or three short sentences introducing a video-insert that the practice in South Africa was actually not started by township people or the liberation movements, but by security policemen like Dirk Coetzee, Eugene de Kock and Gideon Nieuwoudt.

There is a substantial body of evidence that a lot of the evil practices used during the South African war against the liberation movements were copied by South African policemen while they were fighting in the then Rhodesia.

Dirk Coetzee has stated at several occasions that he learnt to burn bodies while stationed at Pendura in Rhodesia in 1974.

Eugene de Kock has repeatedly stated that his first experience of "dirty war" was in the Rhodesian war. De Kock and a number of other policemen who have asked or are asking for amnesty from the Truth Commission have stated that their Post Traumatic Stress Disorder started when they were fighting in Rhodesia, because it was a particularly cruel war.

The founder of the SAP's death squad at Vlakplaas, general Jac Buchner, was a Rhodesian veteran who then joined the SAP. One of his fellow-officers in Rhodesia, general Jan Viktor, worked with him at Vlakplaas, They were Dirk Coetzee's first commanders.

The real pity is that the Rhodesian Security Forces did not have to face a Truth Commission. If they had, I firmly believe they would not have been complaining about remarks like mine.

The Commission was of the view that the references to what was said (probably in inquiries or prosecutions) by Mr De Kock and Captain Coetzee, were not sufficient for it to base a finding in favour of the SABC on. The Commission requested Mr Otto, who appeared for the SABC, to provide it with substantiating evidence.

We received an additional statement by Mr Du Preez plus two documents and a tape: "The Hidden Hand". Mr Du Preez=s statement reads as follows": See Annexure.

The Hidden Hand " inquires into alleged atrocities by the Rhodesian Security Forces and concludes that a wide range of atrocities were committed by the forces. One of the documents, entitled "Civil War in Rhodesia" - A Report from the Rhodesian Catholic Commission for Justice and Peace" recounts numerous allegations of atrocities committed by the said forces and also comes to a negative finding. The other document, which once again deals with alleged atrocities, comes to the same conclusion.

We have, however, found no evidence in the material provided to us of the killing of people by setting them alight after having doused them in petrol or by way of "necklacing". We have also been handed a statement by Captain Dirk Coetzee in which he recounts that, during his attachment to the Rhodesian forces, *corpses* were incinerated at times so as to ensure that identification could not take place. But these acts do not amount to the incineration of *live* people, which lies at the core of necklacing and dousing.

We have accordingly come to the following conclusion:

(a) That there is no evidence that the SABC or Mr Du Preez acted from malicious motives as alleged by the complainant.
(b) That, however, the Respondent and Mr Du Preez have not provided us with evidence that alleged atrocities in the Rhodesia of the seventies, included the incineration of live people by necklacing or by the setting alight of people after having doused them in petrol.
(c) That, accordingly, the statement by Mr Du Preez that incineration of live people in the said forms originated from the Rhodesian Security Forces is not substantiated by the documentation before us.

We therefore find that the Respondent contravened the BCCSA Code by having broadcast a statement which was not adequately sourced or shown to have been adequately sourced before the Commission.

The complaint is accordingly upheld. The SABC is directed to broadcast the following statement in an appropriate viewer and time-slot, as approved by this Commission.

"The Broadcasting Complaints Commission of South Africa recently handed down judgment on a

complaint from the Flame Lily Foundation, which has ex- Rhodesians as its members. The Foundation complained about a statement by Mr Max du Preez during the TRC Report, which deals with the inquiry by the Truth and Reconciliation Commission. The statement complained about was: "the truth, as we now know, is that this repulsive form of killing (that is, necklacing or the incineration of people doused in petrol) was first started by white Rhodesian security forces in the 1970's and then brought to South Africa by the Security Police".

The Commission granted the SABC the opportunity to file substantiating evidence. After having studied the additional evidence, the Commission came to the conclusion:

(a) that there is no evidence that the SABC or Mr Du Preez had acted from malicious motives, as charged by the complainant;
(b) that, however, they have not provided the Commission with evidence that the alleged atrocities in Rhodesia of the seventies included the incineration of live people by necklacing or by the setting alight of people after having doused them in petrol; and
(c) that, accordingly, the statement that these forms of incineration of live people originated from the Rhodesian Security Forces was not substantiated by the documentation before the Commission.

The Commission accordingly held that the SABC contravened the BCCSA Code by having broadcast a statement which was not adequately sourced or shown to have been adequately sourced before the Commission."

The complaint was accordingly unanimously upheld.

JCW VAN ROOYEN SC
CHAIRPERSON