BROADCASTING COMPLAINTS
COMMISSION OF SOUTH AFRICA

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Case No: 23/2000

Date of Hearing: 12 July 2000

Lindiwe N Sisulu **Complainant**

vs

M-NET **Respondent**

TRIBUNAL: **Prof Kobus van Rooyen SC (Chairperson)**
Mr Ratha Mokgoatlheng (Alternate Chair)
Adv Lindi Nkosi-Thomas

FOR THE COMPLAINANT: Mr Ismail Ayob, from Ismail Ayob & Partners, Johannesburg

FOR THE RESPONDENT: Mr D Spitz, instructed by Webber Wentzel, Johannesburg

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SUMMARY

Deputy Minister's complaint that she had erroneously been linked with a Trust as Trustee, upheld.

JUDGMENT

JCW van Rooyen

On the 7th May, the Respondent, M-Net, broadcast an insert on the Lindela detention quarters for the re-patriation of illegal immigrants. The programme was particularly critical of the facility and material showing what was said to be evidence of corruption and a reference to the facility as reminiscent of a concentration camp was included. The names of several prominent persons, including that of the Deputy Minister of Home Affairs, the Complainant, were connected by the programme to Lindela. She was said to be or at least alleged to be a trustee of a Trust which was linked to the quarters. Her photograph was also shown twice.

The complaint reads as follows:

"OUR CLIENT: DEPUTY MINISTER LINDIWE N.SISULU
COMPLAINT: CARTE BLANCHE PROGRAMME ON THE M-NET CHANNEL ON THE 7TH MAY 2000

We act for our abovenamed client who has instructed us to formally complain to you, as we hereby do, that the abovementioned programme aired as set out above, contained a number of distortions, inaccuracies and untruths which have caused damage to our client's reputation and has caused her distress.

We advise that immediately after the screening of the programme, we receive detailed instructions from our client to deal with it.

The allegations contained in the programme were primarily that our client:

1. Was a Trustee of a Trust, which;
2. Was the owner of a Company;
3. Which Company was the successful tenderer;
4. Of a contract by or through the Department of Home Affairs;
5. To manage and run the Lindela Repatriaition Centre in Krugersdorp.

The conclusion to be drawn was that, at best, there is something unsavoury about the matter and, at worst, there is a stench of corruption having regard to our client's position as Deputy Minister of Home Affairs.

The allegations contained in the programme are false and to the knowledge of the presenter and producer of Carte Blanche untrue.

The matter was investigated by ourselves in considerable detail and we set out hereunder are details of our findings.

On the 25th April 2000, a Susan Puren, identifying herself as the producer of Carte Blanche sought an interview with our client ('A').

Our client's office was accordingly never a Trustee of the Dyambu Trust. Our client never at any stage held any equity nor did she have any shareholding in the company formed pursuant thereto. Our client never benefited financially or otherwise from any of the activities of the Trust or of the Company.

Our client never, either in her capacity as a member of Parliament nor as the Deputy Minister of Home Affairs, ever promoted any agreement between the Department of Home Affairs and the Trust or the Company.

The allegations as presented in the programme are false in that the presenter claimed to have found proof at the office of the Master of the High Court of our client's involvement in the Trust.

A copy of the letters of Administration of the Trust issued on the 3RD December 1996 reflecting the names of Nomvula Mokonyane and L. Maseko, is annexed hereto marked('C').

A copy of the Trust Deed signed by the aforementioned two persons is in our possession and is not annexed hereto because it is a lengthy document but can be made available to you immediately. On the 11TH February 1997, in response to a statement made by our client, the leader of the Democratic Party, Mr A.J. Leon stated the following: Mr Chairperson, I rise on a

point of personal explanation. During my speech earlier today, I referred to an Hon Deputy Minister, stating that she was involved in a profit-generating scheme which made money out of repatriation of illegal aliens. I based those remarks on an article which appeared in the Mail & Guardian, 7 to 15 February 1997. I have since been assured by the Hon the Deputy Minister that she was not involved in such business activities after the date of her appointment as a Deputy Minister of Government. I therefore withdraw my remarks unreservedly and wish to apologise to her ": ('D")

The Mail & Guardian of 7/13 February 1997 published an article. Included in the article was a statement "But Mansell said the group was "fairly upset" when it discovered the operations included Lindela. They didn't know how to handle it, especially Lindi Sisulu." Sisulu withdrew from Dyambu in September". ('E")

We have further information should the need arise but we trust that the information furnished to you in this letter will be sufficient in order for you to investigate the matter in terms of your procedures and to grant relief to our client."

At the hearing of the matter a document was handed in by Respondent which was said to have been found in the file of the Dyambu Trust at the Master's Office. This document was also referred to in the programme and it was said that it included the name of the Complainant as trustee. Mr Ayob argued that there was no evidence that this document was indeed in the file and that his copy bore no stamp of the Master to verify that the document had indeed been part of the file. Mr Spitz, thereafter, clarified the matter and referred the Tribunal to the Master's stamp which had been affixed to the back of the page handed in to us. The copy did not show the stamp.

After the close of argument I directed the parties to provide me with the full content of the Master's Dyambu Trust File. On reading the contents of the file, it has clearly emerged that it did include a letter dated 8 November 1996 from a Dr Smith, the Financial Director of Dyambu Trust, to attorneys Salomon-Friedman stating eleven names of trustees of the Trust. The list

included the name of the Complainant. It, however, also appears from the file that the Trust was only registered in December 1996 and that the trust deed only indicated two persons as trustees. According to the trust deed, further trustees could be appointed by the trustees. There is no evidence that such appointment was made and accordingly it is clear that the complainant was not a trustee, despite the letter of Dr Smith. Dr Smith's letter probably reflected the situation when the trust was formed and the persons on the list were involved in the setting up of the trust in April 1996. The Complainant did not deny that she had been involved, but emphatically denied involvement in the trust after she had become Deputy-Minister of Home Affairs in July 1996. That she denies such involvement appears from the letter of complaint and the reference to such denial by the Leader of the Democratic Party, Mr Tony Leon, in Parliament on 11th February 1997. He accepted her word for it. Had we had any reason to delve into this matter deeper, we would have called for an affidavit from her. But, this was regarded as unnecessary.The Trust File itself is satisfactory evidence on the matter: it clearly shows only two trustees in December 1996 and they do not include the Complainant's name. The earlier letter from Dr Smith is simply not borne out by the official document, that is, the Trust Deed in which the Master certifies the *two* trustees.

Clause 2 of the Broadcasting Code which has been agreed to by the Respondent in 1993, provides as follows in sub-clauses 1 to 4:

"Reporting of news

1. The electronic media shall be obliged to report news truthfully, accurately and with due impartiality.

2. News shall be represented in the correct and in a balanced manner, without any intentional or negligent departure from the facts whether by:
   distortion, exaggeration or misrepresentation;
   material omission; or
   summarisation.

3. 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.

4. Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where it has not been practicable to verify the correctness of a report, it shall be mentioned in such report."

It is clear to us that any statement or allegation that the Complainant was a trustee of Dyambu Trust was not correct or based on fact. The issue is, however, whether the Respondent was negligent in terms of clause 2. We are satisfied that the error was not made intentionally and that the comment was honestly made.

That a broadcaster, as is the case with all other media, can no longer be held responsible for an error in the absence of at least negligence, appears clearly from the Supreme Court of Appeal's judgment in *National Media v Bogoshi* 1998(4) SA 1195(SCA). Clause 2 also requires negligence and although it is only stated to be a requirement for sub-clause 2, it is our view that negligence is a requirement in all the said instances. Even before the matter of negligence is decided upon, a defense of reasonableness is available to a broadcaster. What is reasonable is set out in sub-clause(4), obviously read with the other clauses.

The first question is whether the producer had reason to doubt the correctness of the report and whether the matter was properly verified. Objectively we believe that given the Master's file as a whole, the producer had reason to doubt the correctness of Dr Smith's letter. The trustees were clearly designated in the Trust Deed and they did not include the Complainant.

The producer sent a driver on 14 April 2000 to have a look at the Dyambu file at the Master's Office and he made a hand-written copy of the letter of Dr Smith. This letter included the name of the Complainant as a trustee. On the same date the document was brought to the attention of the producer and on the 25th April 2000 she accompanied the driver to the Master's Office where she inspected the relevant documents and organized that copies be made available to her.

Dr Smith's letter plus attachment of "trustees' names" formed part of the file which she inspected and received on the 28th April 2000.

On the 26th April 2000 the producer faxed a letter to Dr Sisulu with the following contents:

"CARTE BLANCHé PROGRAMME: LINDELA
I refer to our telephone conversation of earlier today. The following are my questions:

1. Are you a trustee and/or member of the trust known as Dyambu Trust - TRUST NUMBER 12027/96?

2. If no, when and how did you terminate your membership?

3. If yes, do you get any remuneration and/or benefits as a trustee and/or member of the Dyambu Trust?

4. If yes has any decision taken by the Department of Home Affairs regarding the arrest and deportation of illegal immigrants' and/or the Lindela facility been influenced by your membership of the Dyambu Trust?

5. Is/was this trust and/or any of its members and/or trustees and/or nominees in any way involved in the facility known as Lindela?

6. What is the connection between the Dyambu Trust, Dyambu Operations and Dyambu Investment Holdings?

7. Has Ms Hilda Ndude represented the Dyambu Trust and/or its trustees in her business deals and partnership with Dyambu Operations?

8. What community projects have been established and supported by the Dyambu Trust?

9. What steps are being taken to end the corruption and bribery between officials and inmates at Lindela? Please elaborate.

Thank you for your kind co-operation."

The following response, dated 2 May 2000, was received from her Administrative Secretary:

"INTERVIEW: CARTE BLANCHE

Your letter to Ms LN Sisulu, Deputy Minister of Home Affairs, dated 25 April 2000, refers.

After receiving your letter, Deputy Minister Sisulu called yourself, indicating that she would want to know what the allegations in your letter were and who has made the allegations before she could indicate whether or not she is available for an interview. We are not clear what the allegations are and the Deputy Minister can not respond to unspecified allegations.

The allegations have not been conveyed to the Deputy Minister. Instead, our office received a list of questions and the only one that relates to her in any way, she believes has been extensively covered in the media and parliamentary debates at the time this issue was topical."

The question now arises whether the producer had a duty to have informed the Complainant in her 26 April letter of the Dr Smith letter with attachment. Was it, in other words, possible for the Complainant to have addressed the full issue?

Our conclusion on this issue is that the 26 April 2000 fax omitted a crucial question, namely, was the Complainant aware of the attachment to the letter of Dr Smith and what would she say to that?

We have come to the conclusion that the omission in the 26 April 2000 fax of reference to the Dr Smith letter and attachment, which were in the producer's possession at the time, was material. The producer was, accordingly, not only in error as to the trusteeship of the Complainant, but also in error in not having disclosed the Smith document to the Complainant. It would not have amounted to the disclosure of the identity of a source, which we would have disallowed, but to the simple disclosure of a public document. A document which, in casu, created the wrong impression as to who the trustees of Dyambu Trust were. By omitting this fact from the 26 April fax, the producer failed to verify the matter properly and this omission contributed to the final error in stating the name of the Complainant as a trustee or, in any case, upgrading the Smith letter to an official source of information on who the trustees were. Had the only question been whether the producer had misunderstood the legal requirements for the appointment of a trustee, we would have found in favour of the Respondent. A reasonable

journalist or producer would accept the Smith document at face value and not, as a lawyer would probably do, study the terms of the trust deed as to the appointment of trustees. The *Bogoshi* case allows, as argued by Mr Spitz, a journalist to be wrong under circumstances.

In the present matter, however, the producer could have and should have disclosed the existence of the Smith document to the complainant. There was sufficient time from the discovery of the Smith document up to the broadcast on the 7th May, to have verified the document with the Complainant. The 26th April fax to the Minister, however, fails to convey the very document on which the attack is based. We accordingly find that the error was attributable to the negligence of the producer and that this amounts to a contravention of clause 2 of the Broadcasting Code. The Respondent should have ensured that this material allegation/statement of fact, had been properly verified and was accordingly also negligent in broadcasting the said material.

After having granted the parties an opportunity to address us on the sanction, we hold as follows:

"The Broadcasting Complaints Commission has, after an inquiry, directed Carte Blanche to broadcast the following correction:

In a programme dealing with the Lindela Repatriation Centre for undocumented migrants broadcast by Carte Blanche on 7 May this year, it was incorrectly stated that Dr Lindiwe Sisulu, the Deputy Minister of Home Affairs, was a trustee of the Dyambu Trust, which had an interest in the centre. Although, as conceded by Dr Sisulu, she was involved in the initial stages of the establishment of the Trust, she was not a trustee. After her appointment as Deputy Minister she was also no longer involved in the Trust. The error was the result of a letter which the producer of the insert found in the Master's file of the Trust which reflected Dr Sisulu's name as a trustee. Nevertheless, only two letters of authority have been issued in respect of the Trust, neither of which reflect that Dr Sisulu was appointed as a trustee".

M-Net is directed to broadcast the above statement during the introductory stage of the Carte Blanche programme on the 3rd September.

PROF JCW VAN ROOYEN SC
CHAIRPERSON
30 August 2000