BROADCASTING COMPLAINTS
COMMISSION OF SOUTH AFRICA

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Case No: 28/2000

Date of examination: 12 September 2000

Islamic Information Services (SA) **Complainant**

vs

SABC **Respondent**

Tribunal: **Prof Kobus van Rooyen SC**
Rev Danie du Toit
Ms Dolly Mgoqi

For the Respondent: Mr Malan Otto, General Manager, Audience Liaison, Central Complaints Office, SABC with Ms Esthea du Toit , Legal Adviser, SABC and Ms Claire Robertson, Editor, Television Current Affairs, SABC

The Complainant was invited to attend.

SUMMARY

Complaint that news programme insert did not deal with religious marriages but only with traditional marriages. BCCSA holding that the focus was on the latter and that it was not intended to deal with religious marriages. The programme was, accordingly, balanced and fair.

The second complaint that a focus on persons with a present or past religious career in Parliament, did not include reference to Muslims, also not upheld. The focus was

on persons in Parliament with a high profile. Within this focus the programme was balanced.

JUDGMENT

JCW van Rooyen

During "newshour" which is broadcast Sunday evenings after the 20:00 news on SABC3, several news items were treated of. One was the issue whether the traditional marriage of a certain group would be catered for by the new Marriages Act. The second dealt with Parliamentarians who were simultaneously lay preachers, preachers with a congregation or were priests or ministers of religion.

The complaint which the Registrar received, reads as follows:

*"**Objection to items flighted on "Newshour" (Sunday 13/8/2000):***

1. S.A . Law Commission: Customary Marriages
2. Preachers who are now in Politics

Our objections are:

1. *that the reporter presented the above-mentioned items in a seriously biased, ambiguous, misleading and discriminatory manner, by ONLY reporting on the position of CUSTOMARY MARRIAGES and not reporting on the WIDER AMBIT of the non-recognition of **RELIGIOUS MARRIAGES**, which also were not recognised by the apartheid legal system and judiciary (!), and which is also presently the subject of enquiry by the S.A. Law Commission.*

2. *point 1 is especially relevant, since an interview occurred with a prominent member of the S.A. LAW Commission, namely Professor Nhlapo.*

3. *Since, the Recognition of Customary Marriages Act, has already been passed, the Report was highly confusing and ambiguous…*

4. *According to the Report, Customary Marriages would be recognised **"Before the end of the year…"***

5. *What is the position of religious marriages?*

6. *Why was Judge Navsa or the other committee members or relevant MUSLIM ORGANISATIONS not interviewed as far as Islamic Marriages are concerned?*

7. *Does this imply that the prior **Customary Marriages** Act is to be repealed, or is there an envisaged Amendment to the Act?*

8. *The Report mentioned and showed a youngster who was allegedly jailed for an alleged current offence, that is, intending to marry a young girl of approximately fifteen years of age, after paying the customary lobola and obtaining her parents consent therefor.*

8.1 *Will there therefore only be an amendment to the Customary Marriages Act as relates to the **minimum age of marriage** or will there in fact be a **new Act** passed **before the year-end?***

9. *Secondly, the S.A. Law Commission clip was showed jointly with "preachers" or "former preachers" (Mdladlana (ANC), Sam de Beer, K Mosheshoe (ACDP), Bishop S Magope (PAC) etc., who are now members of parliament.*

10. *Why did the second clip only relate to **"Christian Preachers"** and **not preachers or Priests of non-Christian** faiths, who are now in Parliament?*

11. *Since it was a minority WHITE apartheid-regime who instituted racism in South Africa and followed the precepts of their Colonial masters, we object to the fairly long length of time and video-footage, only of Professor Nhlapo (interview and of him walking down the street), seemingly giving the impression to ordinary viewers, that this is a **"black peoples' problem",** having no obvious connotations and reference either to the **former State, government and their allied agencies.***

12. *The Report is also silent as **to why Religious and Customary Marriages were not recognised, and is therefore unbalanced,** in our view.*

13. *We cannot allow such a **slanted view** to be impressed on the majority of the "oppressed people" of South Africa, as we have had two Constitutions already, and **Interim (1993)** and final Constitution (1996).*

14. *The S.A.B.C as a **STATE BROADCASTER**, has to ensure **compliance** in the first instance with the CONSTITUTION OF SOUTH AFRICA, ACT 108, 1996 and thereafter its relevant applicable law, rules and regulations.*

15. *The said Report has therefore **contravened the following Sections of the Constitution, namely, sections 2, 9, 10, 14, 15, 29, 30, 31, 32, amongst others, general law and otherwise.***

16. *The S.A.B.C. has therefore, in the current context, not demonstrated its commitment to the inclusivity of ALL POPULATION GROUPS, nor of all*

RELIGIOUS GROUPS in SOUTH AFRICA, nor all MINORITY GROUPS in SOUTH AFRICA,

16.1 and has therefore, in our view contravened its own Code of Ethics and or of its stated aims and policies and the afore-mentioned Constitution.

17. We therefore request a VERBAL and WRITTEN statement of apology, of which the verbal statement is to be read twice, once during the week, and one at your next NEWSHOUR PROGRAMME,

17.1 as well as requesting the S.A.B.C to provide a balanced account of the subject matter at hand, to RE-INTERVIEW the S.A. Law Commission and the relevant members, and to broadcast the REVISED INTERVIEWS, with ***ALL AFFECTED COMMUNITIES, in the interests of ALL SOUTH AFRICANS.***

18. If we have erred in any way in terms stated interpretations, kindly bring this to our attention."

Mr Otto responded as follows:

"The focus was customary marriages: <u>NOT</u> religious marriages. The SABC determines the focus of programmes: there was NO obligation on the broadcaster to go to a wider focus (to include religious marriages) as the complainant wished us to do.

(Refer to Claire Robertson's submission) Since the focus was NOT on religious marriages, there would have been no point in interviewing Muslim members of the Committee.

Most of the subsequent questions posed by the complainant should be addressed to the legislator: not to 'Newshour'. The limited time available in the programme did not allow for a comprehensive legal summary of the Recognition of Customary Marriages Act, and the processes involved in making new legislation. Secondly, the public – the average viewer – would not be interested in such detail. When visible progress has been made, when the newsworthiness of the developments warrant it, the subject could be addressed again.

Point 12 was simply not covered by the focus of the programme – it has nothing to do with balance.

Point 13 to 15 of the written complaint are beyond the ambit of the BCCSA's jurisdiction.

The second part of the complaint, dealing with the insert on what Mr Mohammed terms ***'PREACHERS OR PRIESTS in politics':***

*The title of this insert was "**From Pulpit to Politics".** It was, in fact, a shortened version (plus/minus three minutes) of a more comprehensive 10-minute report, broadcast later that same evening (at 22:15) in the actuality programme 'On Camera' on SABC2/*

*Again, one should note the focus. The focus was not, as the complainant seems to believe, religious leaders in Parliament. The insert was titled **"From Pulpit to Politics".** It focused on the fact that some clerics had swopped the pulpit for Parliament – this despite the changed relationship between Church and State, with South Africa now being a secular state. The object was NOT to take a look at each and every cleric in politics: it focused on a number of interesting personalities. Their selection did not depend on the faith they represent, but on newsworthiness.*

Claire Robertson, Editor, Television Current Affairs responded as follows:

"The purpose of the news item you refer to was to highlight an anomaly under the laws governing sexual offences and the practices of customary marriages. The former makes sex with a minor and offence, while the latter allows for marriage – and sexual relations – upon reaching puberty.

Specifically, it pointed out that pending legislation intended to regulate customary marriages, namely the Recognition of Customary Marriages Act due for implementation in November this year perpetuated this anomaly.

The news item explored this anomaly by focussing on the plight of Dumasani Simelane who spent seven months in prison accused of the statutory rape of his wife, aged 15, whom he had married under customary marriage.

As you will be aware, the SA Law Commission is currently working on possible separate legislation relating to Islamic marriages, the debate around which will indeed be fully covered by ourselves in due course. As it is still in the phase of being a mere discussion document, it would serve little purpose to open this debate prematurely.

We are following with interest the debate at the National Ulema Council in Cape Town recently, and other forums, and trust we may call upon your expertise and views on Islamic customary marriages and the law when the time comes to cover this.

In focussing on African customary marriages in the story in question, it was in no way our intention to slight or denigrate the rights of our Muslim viewers. We reassure you that we remain mindful at all times of our duty to refrain from marginalising any groups, religious or cultural, in our country and welcome constructive criticism in this regard."

All the references by the Complainant to religious marriages are irrelevant within the scope of the programme. The focus was clearly on a traditional marriage for which the new Act does not cater. From a balance point of view, there was no duty on the

Respondent to have dealt with religious marriages. That would be for another day and another programme. This was a short newshour insert and not an in depth programme which concerned all marriages. We accordingly agree with Mr Otto.

This complaint is not upheld.

Insofar as the following matter is concerned, it also emerged clearly from the programme, as correctly contended by Mr Otto, that the focus was on persons of high profile. There was no evidence that there were other persons with a similar high profile, who were overlooked. **This complaint is also not upheld.**

References to the Constitution in the complaint are not relevant. What we apply is the Broadcasting Code. Obviously we apply it, as all tribunals are bound to do, in the light of the Constitution. In this matter it was clear cut that no Constitutional provision would or could lead us to a different conclusion. Clause 3 of our Code is already a manifestation of fairness and not one of the Constitutional sections quoted by the Complainant would amend the conclusion reached. Fairness lies at the heart of the sections quoted and clause 3 was interpreted in such a fashion. It cannot be expected from a Broadcaster to cover the whole field of marriage law in a few minutes and as part of a newshour. There was no evidence in the programme of discrimination or of oppression, as referred to by the Complainant. The Respondent acted within its rights and concentrated on the subject. Such choice was not based on any differentiation or discrimination. Even if the programme on marriages "differentiated" by concentrating on traditional marriages, the differentiation, if present at all, was fair. Traditional marriages were the focus and the SABC had acted within its rights by remaining within the ambit of its subject.

The same reasoning applies to the second complaint. Nothing unfair emerged. There was no evidence that a Parliamentarian with a high profile had been overlooked.

The complaints are not upheld.

JCW VAN ROOYEN SC

CHAIRPERSON
14 September 2000