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CASE NO: 47/1/2001

DATE OF HEARING: 31 AUGUST 2001

MR M EVANS

COMPLAINANT

VS

HIGHVELD STEREO

RESPONDENT

**TRIBUNAL: PROF KOBUS VAN ROOYEN (CHAIRMAN)
 MS LINDI NKOSI-THOMAS
 PROF HENNING VILJOEN**

NO APPEARANCE FOR THE COMPLAINANT

**FOR THE RESPONDENT: MR RAVI NAIDOO, PROGRAMMING
MANAGER, 94.7 HIGHVELD STEREO**

Joke told by talk show host - allegation that joke is offensive and repugnant to religious beliefs - meaning of "offensive" limited in law - factors like nature of audience and programme taken into consideration - under these circumstances the telling of the joke found not to be in violation of the Code

SUMMARY

The Complainant complained that a joke, told by Jeremy Mansfield on a talk show, was offensive and repugnant to his (the Complainant's) religious beliefs. The Tribunal decided, after considering the meaning of "offensive" and after taking factors like the nature of the audience and programme into consideration, that the telling of the joke was not in contravention of the Code.

JUDGMENT

Prof Henning Viljoen

On 9 July 2001 the Respondent's early morning talk show host, Jeremy Mansfield, told a joke on the air which went substantially as follows:

In the town of Nazareth, a carpenter was busy in his shop when his fourteen year old boy came to him and said: "You called me father?". Joseph replied: "No son, I hit my hand with the hammer".

Complainant lodged a complaint with the BCCSA, alleging that the joke was offensive and repugnant to his religious beliefs. The Complainant did not elaborate on this, nor did he explain in what sense he considered the joke to be offensive and repugnant to his religious beliefs.

The Code of the BCCSA, to which the Respondent is a signatory, prohibits the presentation of material by broadcasters which is, *inter alia*, "offensive to religious convictions or feelings of a section of the population". The term "offensive" in this context, has been judicially interpreted on several occasions. It has also been held by the Tribunal that the term has to be interpreted in the context of section 16(2)(c) of the Constitution. This subsection limits the freedom of expression to the extent that the advocacy of hatred based on, *inter alia*, religion and which constitutes incitement to cause harm, is prohibited. This narrows the meaning of offensive in law.

It is understandable that the Complainant could have felt offended when hearing the joke complained of. The Tribunal considered the nature of the target audience of the programme: it being mainly sophisticated adults, and the nature of the programme as well as its host, who is known to make jokes which are sometimes of questionable taste. In the light of all this, the Tribunal found that the telling of the joke did not violate the Code because the degree of offensiveness did not meet the requirement of clause 7.1.1 of the Code.

Consequently the complaint was dismissed.

PROF HENNING VILJOEN

The other Commissioners concurred