



ADJUDICATION NO: 06/A/2023

NAME OF PROGRAMME: ISENCANE LENGANE
DATE AND TIME OF BROADCAST: 22 JANUARY 2023 at 21:00
BROADCASTER: MULTICHOICE CHANNEL 157
COMPLAINANT: Sobudula, Mabuza, Mlangeni, Nxumalo, Makhaye, Kabini, Zwane, Modise, Sambo and Others

COMPLAINT

The Complainants are of the view that the Broadcaster through the producers of the Isencane Lengane should not have broadcast the 22nd of January episode due to the various elements concerning violent scenes between the couple, especially the husband's violent behavior towards his wife and child.

APPLICABLE CLAUSES

Content which may not be broadcast: -Advocating...violence or hatred

Clause 10

- 10 A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context –
- 10.2 incites imminent violence; or
 - 10.3 advocates hatred that is based on race, ethnicity, gender or religion and which constitutes incitement to cause harm.
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ADJUDICATION

[1] The BCCSA received over 50 complaints [*hereinafter referred to as 'the Complainants'*] concerning the Moja Love Channel 157 [*hereinafter referred to as 'the Broadcaster'*] programme, *Isencane Lengane* [*hereinafter referred to as 'the episode'*] broadcast on the 22nd of January at 21:00. The complainants alleged Isencane Lengane promoted Gender Based Violence, and that the Broadcaster condones gender-based violence as portrayed in the programme as it continues to broadcast the series without any criticism of the parties' violent conduct.

However, as most of the complainants referred to the Twitter promo, most of the complaints did not fall within the ambit of BCCSA's jurisdiction. The Complainants were accordingly advised to focus their revised complaints on the programme that was broadcast on 22 January 2023. This adjudication therefore deals solely with complaints that were lodged against the programme that was broadcast on 22 January 2023.

[2] **The complaints read as follows:**

Sobudula: "On 22 January 2023, Moja Love Channel broadcast an episode of Isencane Lengane at 9pm. In this episode, there is a depiction of a violent act which constitutes Gender Based Violence where there is a conversation about Siyacela hitting Thando in front of their child further breaks her phone (while being recorded). It is evident the channel knew beforehand (as this was advertised) of the violence and continued to air harmful content. In addition, the channel crew was present when the violent act took place, there are no measures to demonstrate that the victim involved (a woman with a child) was assisted to report the case or protected in any way from the perpetrator. The channel failed to take viewers into confidence about what steps were further taken by them to address this situation. This giving the impression that such content is an acceptable norm. Instead the channel, further gave the perpetrator a diary session where he relayed (did not deny) that the abuse is none of anyone's business. South Africa faces a source of GBV, Femicide and violence against children, the public broadcast the expense of victims should be condemned in all ways possible. I look forward to your response on the issue."

Mabuza: "Kindly be informed that the show Isencane Lengane aired 22/01/2023 9pm reality show is promoting violence against women and children. SOUTH AFRICA is faced with many cases of women who died because of men they thought were in love with them due to the physical abuse. For Siyacela to confess on national TV that if he is not happy with Thando's action (wife) he punishes her physically and Thando confirmed also that it's not for the first time sometimes the guy uses the figure belt, also breaking the phone on the show because he is angry

was very disturbing. What did the producer of this episode think about before broadcasting? This show is not teaching good morals to man but promoting violence.”

Mlangeni: “I would like to lay a formal complaint as a viewer of the show Isencane Lengane which plays on MojaLove TV which is available on the Dstv platform on channel 157 on Sundays at 9pm. The show follows a young married couple as they go through their day to day lives, in an episode that aired on January 22nd at 9pm on Channel 157 on the Dstv platform, the young woman Thando states that her husband Siyacela beats her regularly and as she continues telling the viewers this he takes her phone and smashes it to the ground, in a country as South Africa which is riddled with Gender Based Violence, we as South Africans cannot sit by and watch this show continue to showcase violence and the mistreatment of this young woman as entertainment in our homes, these people need professional help and not a platform to normalize this. Please hold the guilty parties accountable.”

Nxumalo: “I would like to lay a complaint against Isencane Lengane, the episode which aired Sunday 22 January 2023 on Moja Love. I am not sure how domestic violence is promoted in this nature, this guy is clearly abusive and we are being made to watch when he breaks her phone. He admits he hits her as though he is proud of it, what should we expect next? to see him kill her? Please control this. The show aired at 21h00 on Sunday 22 Jan 2023.”

Makhaye: “I would like to lodge a complaint against the TV show Isencane Lengane, which airs on MojaLove Channel 157 on Sundays at 21h00. The episode in question aired Sunday 22 January 2023

It follows a young couple who got married as teenagers, think 15 and 16. We have watched the girl's life deteriorate as we watched, but last Sunday was the worst. Thando told the whole world her husband, Siyacela just hit her... WHILE SHE WAS CARRYING THEIR CHILD.

The channel did not air the actual abuse but on his diary sessions or whatever, where they speak their minds in between the show, Siyacela BOASTED about hitting her and told us HE WAS DISCIPLINING HIS WIFE, "IF YOU HAVE A PROBLEM GO TELL YOUR OWN MAN". He went on and on about how she's not allowed to have friends, except his family. He also admitted to breaking a couple of her phones because she had numbers he did not recognize. He also broke one phone AS WE WATCHED.

He is such a narcissistic and is manipulative, even "cried" when she said she was leaving him. This show does not deserve airtime. This man does all these disgusting things to look cool or whatever, from the way he was boasting and not apologetic after the abuse. We do not need that as a country, we are already the Femicide capital. Too many women have lost their lives at the hands of men. WE CAN NOT BE GLORIFYING GBV WITH AIR TIME. Please look into it. Thank you.”

Kabini: “This e-mail serves to lay a complaint about an episode of Isencane Lengane aired on the 22nd January 2023 at 21H00 on Moja Love.

The channel aired a scene whereby Thando explains how Siyacela beats her up. They even showed us when He threw her phone down and broke it. In a country whereby women lose their lives due to Gender Based Violence it is unacceptable to be watching such scenes or even hear the violence being narrated to us viewers. Irrespective of the disclaimer by the channel that they

will provide counselling we were not supposed to be shown such. Therefore I request that an action be taken towards the channel. Your taking of this complaint into consideration will be highly appreciated.”

Zwane: “I have a complaint about a programme named Isencane Lengane that aired on Dstv channel 157 at 21:00 tonight 22/01/2023. I watched this episode and I'm disgusted, dismayed and very upset that a TV program can air showing such abuse in a country where gender based violence is rife. My grievance is that the show broadcast a woman being subjected to domestic abuse.

The husband of the young lady admitted to hitting her and sees nothing with it even says that's how he disciplines her. The wife confessed that it was not the first time that he physically assaulted her.

He even said 'She is mine' as if she is his possession. She also said he once beat her with a belt. He has isolated from family and controls every aspect of her life, he even says she is only allowed to have friends that he has vetted. This recent abuse happened in front of their infant. We cannot have shows that showcase gender based violence as if they are promoting it. They even filmed him smashing her phone to the ground. This is unacceptable the producers do not seem to be putting the wife and child's safety and well-being first.”

Modise: “In season 5, episode 3 of the reality show Isencane Lengane there is repeated vocalisation by the young wife, Thando, that her husband had physically abused her. The husband, Siyacela, brags an admission that he did hit her. This episode in my view contributes to normalisation of a significant issue the country is fighting against. The MojaLove production team is further complicit as there is no attempt to add a message during or after the episode, that communicates their contempt against gender based violence.

Furthermore, The only warning to viewers on this episode is language (L), and makes no reference to the violence theme of the episode. The wife also physically attacks the husband openly on camera, and this is broadcasted.

I am writing this complaint in strong objection of the criminal elements of this episode which have been freely aired. It is an insult to the message and daily efforts by South Africa to fight the scourge of gender based violence. Kindly intervene.”

Sambo: “Gender based violence on Moja Love Isencane Lengane - It is disturbing to see Siyacela beating Thando and boasting that she belongs to her and nobody can tell him anything. The channel should be made to account for such acts of violence that they allow and not do anything to stop it, because what Siyacela is doing is a crime in South Africa, it cannot be made entertainment at all. I request that this issue be taken with the seriousness it deserves. The show I have a complaint about is Isencane Lengane on Moja Love channel 157 on DSTV, and it aired on Sunday 22 January 2023 at 21:30.”

[3] **The Broadcaster Responded as follows:**

“IN RE: VARIOUS COMPLAINTS ABOUT THE EPISODE ON GBV IN ISENCANE LENGANE // MOJA LOVE

Introduction and background:

1. We refer to the numerous Complaints (“the Complaints”) lodged by various persons against Moja TV Channels (Pty) Ltd (“the Channel”) with the BCCSA. The Complaints

emanate from a recent broadcast of a show called "*Isecane Lengane*" (hereinafter referred to as the "Show") on Sunday, 22 January 2023.

2. Given the numerous Complaints, the Channel requests the BCCSA to exercise its discretion and adjudicate these Complaints all at once for the following reasons:
 - 2.1. The Complaints raise similar if not related issues; and
 - 2.2. The Complaints are with regards to a Show broadcast on Sunday, 22 January 2023 by the Channel and not any other Channel; and
 - 2.3. It would be in the interest of justice, effective dispute resolution and expediency for the Complaints to be adjudicated together as the alleged contravention (s) are in essence relating to alleged promotion of Gender Based Violence ("GBV") by the Channel.
3. The Channel will demonstrate below, that whilst the Complaints relate to a purported violation of the BCCSA Code of Conduct for Subscription Broadcasters ("the Code"), the BCCSA ought to dismiss the Complaints in their entirety for reasons that will be advanced in these submissions in detail below.
4. For ease of reference, it is important to briefly provide a high-level synopsis of the Show, and in the Channel's view why it exists:
 - 4.1. The Show, which is in Season 5 (five) already, is a reality television show that is a continuation of the story of Thando and Siyacela ("the Couple") who married as teenagers under the customs of the communities where they live and with the permission of their parents.
 - 4.2. The Show does not only highlight the Couple's story, but it is intended to educate and encourage a dialogue and/or conversation amongst the South African Public ("the Public") on issues and realities faced by persons in their shoes and/or similar background (including persons in general, regardless of their social standing). It does this by, amongst other things:
 - 4.2.1. showcasing the Couple's challenges as they navigate life; and
 - 4.2.2. understanding the trauma associated with the loss of parents; and
 - 4.2.3. seeing the impact of alcohol on the Couple and the family unit; and
 - 4.2.4. more importantly, the successes that often come with navigating such harsh environments especially by Thando, Siyacela's wife.
 - 4.3. It is the Channel's submission that whilst most of the issues that are tackled on the reality show may, as stated in the Complaints and denied by the Channel, appear offensive, insensitive, and/or encourage GBV, these issues are a necessary part of the discourse on GBV and social ills including fostering debates/discussion to curb the scourge of GBV.
 - 4.4. The Channel demonstrates in detail that the Show broadcast on Sunday, 22 January 2023 did not breach any of the provisions of the Code.

The essence of the Complaints summarized:

5. Having read through the various Complaints lodged with the BCCSA, the Channel is of the view that the issues raised in the Complaints could be themed in 4 (four) parts as follows:
 - 5.1. The show violated Clause 9.5 of the Code by broadcasting “the explicit infliction of or explicit effects of extreme violence which constitutes incitement to cause harm.”
 - 5.2. The Show violated Clause 10.2 of the Code by broadcasting material, judged within context, incites imminent violence; and
 - 5.3. The Show violated Clause 10.3 of the Code by broadcasting material, judged within context, advocates for hatred based on race, ethnicity, gender or religion which constitutes incitement to cause harm; and
 - 5.4. The Show glorifies, promotes and thereby perpetuates GBV and essentially has done nothing to protect Thando from Siyacela.
 - 5.5. The Channel sets out in detail its response to the Complaints and will refer to the provisions of the Code to demonstrate that there is no breach of the Code in any way.

The Law

- 6.1 Before we proceed to deal with the Code, it is necessary to place the Code within its proper constitutional and legislative context.

- 6.2 The Constitution

- 6.2.1 Section 16 of the Constitution of the Republic of South Africa¹ (“the Constitution”), which guarantees the freedom of expression, including the freedom of the press and other media, provide as follows:

“16. Freedom of expression

- (1) *Everyone has the right to freedom of expression, which includes—*
 - (a) *freedom of the press and other media;*
 - (b) *freedom to receive or impart information or ideas;*
 - (c) *freedom of artistic creativity; and*
 - (d) *academic freedom and freedom of scientific research.*
- (2) *The right in subsection (1) does not extend to—*
 - (a) *propaganda for war;*
 - (b) *incitement of imminent violence; or*
 - (c) *advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm”*

¹ Act 108 of 1996

The Code

6.3 Clauses 9 to 11 the Code set out what content may not be broadcast by licensees. The relevant parts read as follows:

“Content which may not be broadcast

Child pornography, bestiality, incest, rape, sexual conduct and violence

9 *A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context, contains a scene or scenes, simulated or real, of any of the following –*

...

9.5 *the explicit infliction of or explicit effects of extreme violence which constitutes incitement to cause harm.*

Advocating war, violence or hatred

10 *A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context –*

...

10.2 *incites imminent violence; or*

10.3 *advocates hatred that is based on race, ethnicity, gender or religion and which constitutes incitement to cause harm.*

6.3.1 Therefore, in summary, content will contravene clauses 9 and 10 of the Code where such content:

6.3.1.1 depicts the explicit infliction of or explicit effects of extreme violence which constitutes incitement to cause harm;

6.3.1.2 incites imminent violence; or

6.3.1.3 advocates hatred that is based on race, ethnicity, gender or religion and which constitutes incitement to cause harm;

6.3.4 It is clear from the language of the Code that a broadcast scene will contravene the Code where only one (and not necessarily all three) of the above content type is broadcast.

Analysis

7.1 As is apparent from the above, clauses 10 of the Code is, *mutatis mutandis*, identical to section 16 of the Constitution.

7.2 It is indeed a generally accepted fact that section 10 of the Code is indeed based on section 16 of the Constitution.

7.3 The issues raised by the Complaints, therefore, heavily implicate the right to freedom of expression, in particular the right to freedom of the press and other media.

7.4 Simply put, the issue or determination by the BCCSA is whether, in broadcasting the impugned episode, the Channel exceeded the boundaries of its right to freedom of expression as contained in section 16 of the Constitution and as codified in the Code.

7.5 The Constitutional Court has, in the context of freedom of expression, previously held that:

" . . . freedom of expression is one of a 'web of mutually supporting rights' in the Constitution. It is closely related to freedom of religion, belief and opinion (s 15), the right to dignity (s 10), as well as the right to freedom of association (s 18), the right to vote and to stand for public office (s 19), and the right to assembly (s 17) . . . The rights implicitly recognise the importance, both for a democratic society and for individuals personally, of the ability to form and express opinions, whether individually or collectively, even where those views are controversial".²

7.6 In *S v Mamabolo (ETV, Business Day and the Freedom of Expression Institute Intervening)* the following was said by the Constitutional Court:

"Freedom of expression, especially when gauged in conjunction with its accompanying fundamental freedoms, is of the utmost importance in the kind of open and democratic society the Constitution has set as our aspirational norm. Having regard to our recent past of thought control, censorship and enforced conformity to governmental theories, freedom of expression the free and open exchange of ideas is no less important than it is in the United States of America. It could actually be contended with much force that the public interest in the open marketplace of ideas is all the more important to us in this country because our democracy is not yet firmly established and must feel its way. Therefore, we should be particularly astute to outlaw any form of thought control, however respectably dressed."³

7.7 Like all other constitutional rights, the right to freedom of expression is not absolute. It is subject to the limitations set out in section 16(2) of the Constitution. Such limitations however, do not include taking offence, disgust and similar emotions.

7.8 In this regard, the BCCSA has previously held in *Maree v Multichoice (KykNet)*⁴ that:

"Lastly, it should be mentioned that the Complainant's apparent disgust at the film being shown in these times when apartheid has been outlawed by the Constitution, is of course a permissible personal reaction. However, the views underpinning this reaction are not accommodated by the Code, which permits broadcasters to broadcast material of their choice, as long as the material does not infringe upon the rules laid down in the Code. Films portraying the evils of the past are not forbidden – in fact, history cannot and should not be ignored, even if it reminds one of a terrible past."

² *South African National Defence Union v Minister of Defence and another* 1999 (6) BCLR 615 (CC); 1999 (4) SA 469 (CC) para 8.

³ 2001 (5) BCLR 449 (CC); 2001 (3) SA 409(CC) para 37.

⁴ Case 31/2014 BCCSA

7.9 In the *Van Wyk and Others v SABC* 3⁵ matter, the BCCSA held as follows:

Freedom of speech and expression are hard worn rights in our democracy and should not be easily limited. Although we realise that many viewers of the episodes of Isidingo which are the subject of these Complaints, were upset and offended by what they saw, that was not sufficient to find the broadcast amounted to hate speech. The broadcaster has, in terms of its license, the duty, inter alia, to educate and to entertain. We are informed that with these episodes the broadcaster intended to promote democracy by setting up a debate about racial relations and the struggle for land. We have no authority to find that the broadcaster exceeded its license conditions. That duty would be for ICASA to decide. Our duty is to judge whether the content of the programme exceeded the boundaries of the freedom of expression as determined in the Code of Conduct.”

Has there been a contravention of the Code?

8.1 Having placed the provisions of sections 9 and 10 of the Code in their proper constitutional context, we now opine on whether the impugned episode has contravened those sections

8.2 Incitement to cause harm. (Clauses 9.5 and 10.3 of the Code)

8.2.1 It is important to note that, both in respect of clauses 9.5 and 10.3 of the Code, the

impugned conduct must constitute incitement to cause harm in order for there to be a contravention.

8.2.2 Put differently, whether or not there has been a contravention of clause 9.5 and 10.3 of the Code is, in each case, a two-stage inquiry.

8.2.3 In the case of clause 9.5, there must, in the first instance, be “*the explicit infliction of or explicit effects of extreme violence*”. Similarly, in the case of clause 10.3 of the Code, there must, in the first instance, be an advocacy of hatred based on the prohibited grounds as listed in the clause.

8.2.4 In the second instance, in the case of both clause 9.5 and 10.3 of the Code, there must be incitement to cause harm.

8.2.5 Therefore, where incitement to cause harm cannot be established, a contravention of clauses 9.5 and 10.3 of the Code, *a priori* cannot be established, even where the first leg of the inquiry is satisfied.

8.3 Incitement to cause harm (Clauses 9.5 and 10.3 of the Code)

8.3.1 Incitement

8.3.1.1 As already discussed above, the presence of the incitement to cause harm is a *sine quo non* to the contravention of clauses 9.5

⁵ [2017] vol 55329 (BCCSA)

and 10.3. That is to say, there cannot be a contravention of these clauses without the presence of an incitement to cause harm.

- 8.3.1.2 The word "incitement" is derived from the word "incite". The South African Concise Oxford Dictionary⁶ and Black's Law Dictionary⁷ define "incite" and "incitement" respectively as follows: "encourage or stir up (violent or unlawful behaviour) ; urge or persuade to act in a violent or unlawful way".
- 8.3.2.2 Having reviewed the impugned episode, we could not identify any aspect of the broadcast which constitutes incitement to cause harm within the meaning set out above.
- 8.3.2.3 This is because, amongst other things, the episode does not encourage, stir-up, urge or persuade the viewer to do anything, let alone cause harm. It merely tells the story of the wife. No reasonable viewer, having watched the episode, can be reasonably incited to cause harm. In fact, it is quite the opposite. The episode clearly portrays the damaging and hurtful effects of domestic violence, in this case, on the wife.
- 8.3.2.4 It is only the most callous viewer that can walk away from the episode having been incited to do harm.
- 8.3.2.5 It also cannot be said that there was an intention on the part of the Channel to influence the mind of the viewers to commit a crime, in this case GBV, in the sense in which it is meant in the EFF matter.
- 8.3.2.6 In the result, in our submission, an incitement to cause harm cannot be established.

8.4 Incitement of imminent violence (Clause.10.2 and of the Code)

- 8.4.1 Clause 10.2 of the Code prohibits the broadcast of material that when judged within context, amounts to "incitement of imminent violence".
- 8.4.2 In this regard, the wording makes it clear that there are two elements that a broadcast must meet in order to fall within the ambit of this clause, namely that there has to be "incitement" and the violence has to be "imminent".

8.4.2.1 Incitement

- 8.4.2.1.1 We have already dealt with the ordinary meaning of incitement in para 8.3.1 above.

8.4.2.2 Imminent

- 8.4.2.2.1 Again, the South African Concise Oxford Dictionary⁸ defines the word imminent as "about to happen and

⁶ Oxford University Press Southern Africa, Cape Town, (2002).

⁷ Black's Law Dictionary, West Group, St Paul, Minn (1999).

⁸ Oxford University Press Southern Africa, Cape Town (2002).

archaic overhanging". Black's Law dictionary⁹ in the context of imminent danger and the definition reads "an immediate, real threat to one's safety that justifies the use of force in self-defence. Criminal Law describes the word imminent "as the danger resulting from an immediate threatened injury sufficient to cause a reasonable person to defend himself or herself".

- 8.4.2.2.2 From the definitions of the words incitement and imminent, the BCCSA jurisprudence has over the years interpreted this clause to mean if the conduct is to fall within the prohibitions of clause 10.2 of the Code, it should have encouraged or stirred up or urged on or provoked violence. In addition, the conduct should not have just ended at incitement of violence, but the violence incited should have been real in the sense that it should have been immediate and/or should have been about to happen at the time of the incitement.
- 8.4.2.2.3 No incitement to cause imminent violence within this meaning is present in the impugned episode.
- 8.4.2.2.4 Therefore, the impugned episode did not in any way urge or provoke or stir up violence and it's broadcast was not likely to result in any immediate violence to anyone.
- 8.4.2.2.5 Consequently, it is our submission that the impugned episode did not contravene the provisions of clause 10.2 of the Code.

8.5 Advocacy of hatred. (Clause 10.3 of the Code)

8.5.1 As already indicated in para 7.3 above, having found that the episode does not infringe paragraphs 10.3 and 9.5 in that it does not constitute incitement to cause harm, it is not necessary to consider whether or not the second leg is fulfilled i.e. in the case of clause 10.3 whether the episode advocates hatred which is based on race, ethnicity, gender or religion.

8.5.2 However, we do so below only for purposes of completeness.

8.5.3 Advocacy

8.5.3.1 The word "advocacy" is a derivative from the word advocate and the South African Concise Oxford Dictionary¹⁰ and Black's Law Dictionary¹¹ respectively define advocacy and advocate as follows: "a person who publicly supports or recommends a particular cause or policy; a person who pleads a case on someone's behalf" and "advocacy" as "the work or profession of an advocate; the act of

⁹ Black's Law Dictionary, West Group, St Paul, Minn, (1999).

¹⁰ Oxford University Press Southern Africa, Cape Town (2002).

¹¹ Black's Law Dictionary, West Group, St Paul, Minn, (1999).

pleading for or actively supporting a cause or proposal". Again, the BCCSA's jurisprudence has over the years maintained that for there to have been advocacy by/from the comment in question, the comments ought to have publicly strongly supported or pleaded for any action against people based on their race, ethnicity, gender or religion. In the context of the comments in question, there was no advocacy of any cause against any one person based on any of the four grounds.

8.5.3.2 It is, therefore our submission that the comments in question did not in any way strongly support or recommend or plead for any action based on any of the four grounds mentioned in the clause.

8.5.4 Hatred

8.5.4.1 The *South African Concise Oxford Dictionary*¹² defines hatred as "intense dislike", while *Black's Law Dictionary*¹³ defines hate speech as "Speech that carries no meaning other than the expression of hatred for some group, esp. in circumstances where the communication is likely to provoke violence". Cory JA¹⁴ defined hatred thus: "Hatred is not a word of casual connotation. To promote hatred is to instill detestation, enmity, ill will and malevolence in another. Clearly an expression must go a long way before it qualifies. . .".

8.5.4.2 Again, the BCCSA's jurisprudence has over the years insisted that, for there to be a contravention of the Code, the comment complained of must instil or promote or provoke or urge any detestation or ill will or violence against anyone based on such a person's race or gender.

8.5.4.3 We submit that the impugned episode in question did not/does not rise to the standard which must be met in order for it to qualify as hate speech based on race, ethnicity, gender or religion.

8.6 Explicit infliction or explicit effects of extreme violence (clause 9.5 of the Code)

8.6.1 Similarly, we deal with the first leg of the inquiry under clause 9.5 only for the sake of completeness, given our conclusion that there is no incitement to cause harm.

8.6.2 As already stated above, the violence perpetrated by the husband against the wife is not broadcast in the episode. We are only told by the wife that she has been the victim of such violence. For the purpose of this response, we accept that as true.

8.6.3 Given that, the violence in question has not been broadcast:

¹² Oxford University Press Southern Africa, Cape Town (2002).

¹³ Black's Law Dictionary, West Group, St Paul, Minn, (1999).

¹⁴ R v Andrews, Supreme Court judgment [1990] 3 S.C.R. 870 case number 21034.

- 8.6.3.1 It is, by definition, impossible for one to argue that there has been a broadcast of the “infliction of the violence” (whether explicit or otherwise) or indeed to argue that there has been a broadcast and the effects of the violence (whether extreme or otherwise). This determination can only be made if the violence had been broadcast.
- 8.6.3.2 In the result, it is our submission that the second leg of the enquiry under clause 9.5 of the Code has not been fulfilled and, therefore, there has not been a contravention of clause 9.5 of the Code.
9. It is, additionally, the Channel’s submission that the broadcast of the Show did not breach any of the provisions of the Code for the following reasons:
- 9.1. The Show is a narrative which reflects the reality of the conflict between traditional norms and practices, against modern westernised society, values, and attitudes. It documents the realities of society, in this instance, GBV. At no point did Siyacela actively incite violence and/or encourage Men to assault their wives and/or partners. Read and watched in context, the Show and the complained conduct arose out of an account where Siyacela was stating that he had assaulted his wife, Thando and sought to provide background/ context to the abuse.¹⁵
- 9.2. The Channel believes in producing content that reflects the reality in our society, including its social ills, and as such could not conceal the GBV incident between the Couple especially in a country that has a high rate of femicide and GBV. It is thus the Channel’s view that it had the responsibility to broadcast the episode with a hope of creating awareness and dialogue on GBV. This aspect cannot be said to fall within the definition of “*advocating hatred on the basis of gender*” as defined in the Code.
- 9.3 The Channel did not broadcast any extreme violence, but rather broadcast Complaints by Thando that Siyacela is physically abusive toward her, and a scene where Siyacela smashes Thando’s phone on the ground. Those, by any standard cannot constitute extreme violence and they do not constitute an incitement to commit violence in the context of Clause 9.5.
10. Although the complaints relate to a specific episode, the storyline is continuous and therefore the channel did broadcast corrective measures in the following episode where the couple attend counselling session with a social worker. Those episodes have been shared with the Commission.

Additional submissions

11. As demonstrated above, the Channel did not contravene any provisions of the Code.
12. However, we deem it necessary to demonstrate that the Complaint “the Channel did nothing to protect Thando” and/or “glorifies” gender-based violence is misconceived and without merit for the following reasons:

¹⁵ The Channel would like to make it clear that violence of any kind, regardless of context cannot be justified. It is for this case that the broadcast was necessary to contextualize the issues in dispute and the background.

- 12.1. The Complaints are premised on a single episode which forms part of a 13 (thirteen) part storyline. In subsequent episodes, Thando and Siyacela are offered, and currently attend, ongoing support, in the form of counselling.
- 12.2. Further, it must be stressed that the Channel consults with, and respects the wishes of the persons who feature on its shows. The Channel takes particular care not to violate the privacy of such persons and has continually provided pre- and post-counselling support to the couple, which typically is not broadcast due to the sensitivity and confidentiality of the situation. The Channel takes such responsibility seriously.
- 12.3. It must be further noted that the Channel took proactive steps when the assault occurred by:
 - 12.3.1. Production Crew stepped-in and restrained Siyacela; and
 - 12.3.2. The Production Crew called the police but could not record the police intervention;

and

 - 12.3.3. Thando was advised to open a criminal case of assault against Siyacela, but she chose not to exercise this right and instead, the Channel moved Thando, to a different location away from Siyacela.
 - 12.3.4. Furthermore, remedial content was broadcast on Sunday, 29th January 2023. The special broadcast was a conversational dialogue between men regarding GBV, its causes and suggestions on how men can collaborate in an effort to end this epidemic. Siyacela himself will take part in the conversation.

Further submissions

13. Should the BCCSA find that the Channel breached the Code, despite the above submissions, it is the Channel's submissions that the Exceptions set out in the Code are a defence to the offending provisions and the Channel for the following reasons:
 - 13.1. The Code at Clause 11 of the Code provide as follows:

“ Clauses 9 and 10 (Channel's underlined emphasis) do not apply to :
...
11.3.
broadcasts which amount to a bona fide discussion, argument or opinion on a matter of public interest.” (Channel's underlined emphasis).
14. GBV, Femicide and general crime statistics against Women and Children in this country are shockingly high. It is through well-resourced policing, an efficient justice system, political will and conversations that such crimes could be addressed, if not reduced.
15. It is the Channel's view that it would not be in the interest of justice to sweep under the carpet, Siyacela's conduct including the discussion on GBV by not broadcasting the conversation post the assault on the basis that this encourages and/or perpetuates GBV.

16. What is clear from the Complaints is that a concerted effort is required to address and combat the scourge of GBV in this country, and it cannot not be left to law enforcement. Hence, broadcast of such an episode squarely falls within the ambit of public interest as defined in the Exceptions provisions of the Code. It is in the interest of justice to broadcast content and/or material that are *bona fide* matters of public interest.

Conclusion:

17. Having stated the above and contextualised the episode, it is the Channel's view that the BCCSA should find as follows:
 - 17.1. All the Complaints are dismissed; and
 - 17.2. The Broadcaster did not breach Clause 10 of the Code; and
 - 17.3. It was in the interest of justice for the episode to be broadcast as it contained *bona fide* discussions or opinions on matters of public interest.
18. The Channel remains available to assist further and/or supplement its submissions should the BCCSA so request."

EVALUATION

- [1] Having noted the 50+ complaints, the Broadcaster's responses and all the supplementary written submissions – I want to bring the following to the attention of all parties concerned:

- 1.1 The episode that was broadcast on the 22nd of January 2023 will be the only broadcast that will be considered in relation to this complaint.
- 1.2 It is trite that the Broadcaster did supplement its submissions with the two videos post the episode. The latter will not form part of this adjudication as the complaints were lodged in respect of the programme that was broadcast on 22 January 2023.

- [2] The BCCSA Code Clause 10 states that:

- 10 *A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context –*
 - 10.2 *incites imminent violence; or*

10.3 *advocates hatred that is based on race, ethnicity, gender or religion and which constitutes incitement to cause harm.*

and in essence precludes its licensees from knowingly broadcasting content which advocates violence or hatred.

SUMMARY OF FACTS:

The episode in question is part of Season 5 of the programme and is a pre-recorded reality broadcast of the two young adults [18 and 19 years respectively] who are the main characters in the programme and who entered into marriage when they were very young.

The couple seem to be at their wits end with marital challenges, and do not understand nor know, what entails healthy marital dispute resolution process[es]. In the impugned episode, the couple is having a conversation where they are reliving the previous day's events when the husband had assaulted his wife. The wife is evidently unhappy because she was assaulted and tries to understand the husband's reasons for the assault as she is still a bit confused. According to her the fact that she received a phone call from her girlfriend who had seemingly organized some men for her, angered her husband. She continues to complain about her husband's reaction and further alleges that had it been a man who had called her, the assault would have probably been worse. The husband does not show any emotion while sitting next to her and listening to her telling the story. He later states his reasons why he assaulted her in a rather condescending tone. The interview switches back to the scene where the husband takes his wife's cellphone and smashes it on the floor.

[3] **APPLICATION OF PROVISIONS OF CLAUSE 10 TO THE FACTS:**

3.1 **NATURE OF THE EPISODE**

'knowingly broadcast'

Isencane Lengane is a pre-recorded reality programme about the marital lives of a young couple within the outskirts of Kwa-Zulu Natal. It can be assumed therefore that the episodes go through various forms of editing before there can be a final broadcast. The promotional advertisements about new episodes are broadcast in advance to keep the viewers interested. These promotional advertisements would display scenes from the next episode in the series. The producers are therefore well aware of the content of the programme and of the possibility that if it is going to be broadcast as is, it runs the risk of being perceived as condonation of gender-based violence.

3.2 *'incites imminent violence'*

The actual identification of violence¹⁶ is often a subjective evaluation of events by viewers who interpret the scenes portrayed, based on their own experience and understanding of the violence portrayed. No scenes of actual violence perpetrated against the wife are portrayed during the impugned episode (only discussed and referred to), but the scene where her husband snatched her new phone from her and throws it on the ground, is a very powerful act of aggression.

Although most Complainants were concerned about the latter and pointed towards the abuse of the wife, the wife in the same impugned episode, slaps her husband when he approaches her to apologize for his actions. As pointed out and discussed above, Complainants evaluated the violence based on their perception of violence which is informed by the historical¹⁷ and current violent pandemic against women and children within the broader South African perspective, namely GBV murders that are daily

¹⁶ 'abusive behavior in any personal relationship that allows one partner to intimidate, or to gain power and control over the other'

¹⁷ **Femicide in South Africa: Why men kill women** | 29 May 2018 - 06:00 | BY KGAUGELO MASWENENG | Times Live **Lawlessness**, access to guns, **an inferiority complex** and other factors can be reasons why intimate partners kill their loved ones at such a shocking rate, say experts. Recently, South Africans have been inundated with stories about women falling victim to femicide.

reported and the perceived inability of government to curb violence against women.

3.3 ***advocates hatred that is based on ..., gender or ...and which constitutes incitement to cause harm***

The slap from the wife is a perfect example of how violent conduct can incite people to act violently. Women who are repetitively subjected to these types of violent behavior may eventually turn to violence themselves. The husband's actions towards the wife may create a submerged hatred which constitutes incitement to cause harm. The fact that both the husband and his wife's violent conduct was not immediately addressed, sends a message of acceptance and / or tolerance of violent conduct by the Broadcaster.

The comments made by the husband during the in-between interviews where he states that his wife knows that he does not want her to have any friends, be it men or women give the impression that he thinks violence against women can be justified. The fact that this impression is not immediately corrected or criticized by the Broadcaster is problematic. It has been accepted in the past that problematic content in an episode of a soapie or series can be tolerated if it clearly forms part of a specific storyline where further episodes will address and rectify the impugned content. However, in this instance there is no storyline and no context as it is a reality programme. Viewers are left with the impression that this is how people like themselves (and not actors) address problems in everyday life. In view of the violence perpetrated, the fact that it is a reality programme and most importantly, that the violence was not immediately denounced and identified as criminal conduct constitute a contravention of all the provisions of Clause 10.2 and 10.3 of the Code of Conduct.

From the editorial independence perspective, it is important for the Complainants to note that the BCCSA does not pre-censor material, and it is not empowered to order Broadcasters to remove programmes from air. It can only react to complaints about the content of a programme that has been broadcast.

[4] **All factors considered the BCCSA upholds the complaints *in toto*.**

[5] The Broadcaster was invited to submit mitigating statements to the Registrar of the BCCSA which reads as follows:

“RE: MITIGATING FACTORS: MULTICHOICE SOUTH AFRICA (PTY) LTD // “ISENCANE LENGANE” BCCSA COMPLAINTS REVIEW.

1. INTRODUCTION

- 1.1. The Broadcasting Complaints Commission of South Africa (“**the Commission**”) has found that Multichoice has contravened clause 10 of the BCCSA Code (“**Code**”).
- 1.2. Consequently, MultiChoice and Moja Love Channel (“**the Channel**”) have been invited to submit arguments in mitigation. We do so in the following paragraphs below.

2. ARGUMENTS IN MITIGATION

- 2.1. We submit that the sanction should take into account the nature of the programme, in particular that it is (i) a reality tv programme and (ii) it is a continuous and developing story which has its own regular and loyal viewers.
- 2.2. The viewers who watched the episode in question would have had been following the programme for a while and familiar with the personalities of the participants. Importantly, although the corrective measures were not immediately implemented in the same episode, the viewers of the programme would naturally wait for the next episode to find out about the interventions, if any, from the Channel to address the problems identified in the episode in question.
- 2.3. Further, the programme being a reality television series and therefore a mirror of the society, the Channel laboured under the *bona fide* view that GBV had to be portrayed as it occurs in the real world. The intention was to fully expose GBV and its effects on the victims so as to spur society into dialogue and positive action against the scourge of GBV. The Channel was more of a messenger in this case than an instigator.
- 2.4. Given that the depiction of violence was intended to inform society of the plight of many people subjected to GBV in South Africa, it was broadcast with the *bona fide* view that no viewer would feel enticed to themselves go commit violence. It was never the intention of the Channel to incite imminent harm, but rather, to bring it to light and eradicate it.

- 2.5. In line with the stance by the Channel against GBV, the following onscreen and offscreen corrective measures were implemented by the Channel and some of these were shared with the viewers:
 - 2.5.1. though off camera, the Channel's crew immediately restrained and reprimanded Siyacela for violence perpetrated by him on his wife;
 - 2.5.2. the crew further sought assistance the police who in fact intervened. Thando, the victim, does refer to this intervention in the next episode.
 - 2.5.3. Thando was advised by the Channel to open a criminal case of assault against Siyacela, which advise she declined;
 - 2.5.4. The Channel moved Thando to a different venue away from Siyacela so as to ensure her safety;
 - 2.5.5. The Channel has provided, and continues to provide, counselling to both Thando and Siyacela;
 - 2.5.6. On 29 January 2023, the Channel aired a special broadcast of a conversation among men regarding the scourge of GBV in the country, which Siyacela was a part off.
3. Viewed wholistically, it is apparent that the Channel does not endorse GBV. The Channel's immediate and continued efforts to stop GBV are clear evidence for the view that the Channel does not in fact, support or promote GBV.
4. The remedial steps taken by the Channel were also forward looking in the sense that both Thando and Siyacela, during the counselling, were, and still are encouraged to deal with conflict without inflicting or accepting/tolerating abuse. Further, the special broadcast was aimed at allowing men to talk to men about eradicating GBV.

5. CONCLUSION

We are of the opinion that in view of the corrective measures taken by the Channel referred to above and also taking into account the nature and context of the programme, a reprimand is a suitable sanction."

[6] SANCTION

Having noted the Broadcaster's mitigation factors, it is imperative that its attention is drawn to the provisions of Clause 10 specifically, the 'knowingly broadcast' of the GBV related episode – and neglecting to proactively rectify the violent content.

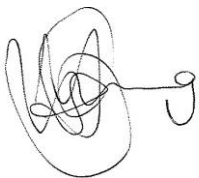
As conceded in their submissions, this series has been in broadcast for years now and even though the BCCSA received a multitude of complaints regarding this specific episode it appears from the complaints – that there has been a growing discontent about the programme's objective for a while now. The compelling difference this time around was the escalation from emotional abuse

to the actual physical violence including the justification thereof without any corrective from the Broadcaster.

The Broadcaster did not indicate that a pro-active corrective approach broadcast will be flighted in future at any stage during the impugned programme, as a sign that the Broadcaster acknowledged the toxicity of the programme and accordingly invited the viewers to watch the latter at a specified date. What we witnessed in this matter through the received videos, was a rather reactive approach by the Broadcaster post the deluge of the complaints received by the BCCSA.

While the internal steps that the Broadcaster implemented are a step in the right direction, the BCCSA cannot take cognizance thereof as our jurisdiction is limited to the content of the broadcast.

That being the case, a fine of R50 000 is imposed against the Broadcaster which is payable within fifteen [15] working days of the receipt hereof.



ADV BOITUMELO TLHAKUNG
COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION