



ADJUDICATION NO: 22/A/2026

NAME OF PROGRAMME: PROF PITIKA NTULI INTERVIEW HOSTED
BY KOENA MOABELO

DATE AND TIME OF BROADCAST: 28 APRIL 2026

BROADCASTER: POWER FM

COMPLAINANTS: SHANGASE

COMPLAINT

COMPLAINT CONCERNING, HATE SPEECH, COMMENT, BALANCE AND DIGNITY.

APPLICABLE CLAUSES

FREE-TO-AIR CODE

- Clause 4.2(c)** Broadcasting service licensees must not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.
- Clause 12(2)** Comment must be an honest expression of opinion and must be presented in such manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.
- Clause 13(1)** In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period

of time of the original broadcast and within substantially the same time slot.

- (2) A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given the right to reply to such criticism on the same programme. If this is impracticable, reasonable opportunity to respond to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

CLAUSE 15(1) Broadcasting service licensees must exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that the said rights may be overridden by a legitimate public interest.

ADJUDICATION

- [1] Complaint was lodged against a Power FM interview conducted by Koena Moabelo broadcast on the 28th of April. The complainant is of the view that: *“By dismissing my contribution on ethnic grounds and refusing engagement, the broadcast amounted to advocacy of hatred based on ethnicity which denigrates and excludes a caller, and constitutes incitement to cause harm by silencing dissent on ethnic identity issues.”*

- [2] **The complaint read as follows:**

“Power FM, PROF PITIKA NTULI INTERVIEW* , *Broadcast:* Power FM 98.7, hosted by Koena Moabelo, 28 April 2026.

POWER FM 98.7 – CLAUSES 12, 13, 14, 15 – 30 APRIL 2026

TO: BCCSA Complaints Department

DATE: 30 April 2026

RE: Formal Complaint Against Power FM 98.7 – Breaches of BCCSA Free-to-Air Code Clauses 12, 13, 14, 15

---*COUNT 1: 28 APRIL 2026 – PROF PITIKA NTULI INTERVIEW*

Broadcast: Power FM 98.7, hosted by Koena Moabelo, 28 April 2026.

Incident:

I called in and stated:

"Greetings Prof I've followed your work you thought us that Tribalism was a fun colonial to divide us Akere Before 1652 there was no Zulu Nation, There were clans Bo Zulu O Qwabe,OMthetwha Njalonjalo, I Was disturbed when I heard you talking about Pure Zulu, Because as far as i know, there is no such a thing called Pure Zulu or Pure... What I know is pure people not pure Zulu, In fact,..." _

Prof Ntuli responded:

"Wait wait Let Me stop you there, did you hear me saying pure Zulu... Please don't invent my own words and say I said pure Zulu." _

When pressed, Prof Ntuli stated:

"this comes from a level that I can not deal with, he must sort Himself Up, what he has said to me is silence." _

BCCSA Code Breaches:

1. *Clause 14 – Discrimination and Denigration*

Verbatim: "Broadcasting licensees shall not broadcast material which, judged within context, amounts to the unfair discrimination against, or the denigration of, any person or group of persons on, amongst others, the grounds of race, national or ethnic origin, colour, religion, gender, sexual orientation, disability or other similar grounds."

Breach: The phrase _"this comes from a level that I can not deal with" denigrated me based on perceived status/origin and was broadcast to shut down debate.

2. *Clause 12 – Comment*

Verbatim: _"Comment must be an honest expression of opinion and must be presented in such manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to." _

Breach: Prof Ntuli made historical/ethnic claims about "Zulu in Xhosa, Zulu in Swazi" and presented them as fact without basis, then refused to substantiate them when challenged.

COUNT 2: DATE UNKNOWN – MBUYISENI NDLOZI HOSTING MINISTER VELENKOSINI HLABISA

Broadcast: Power FM 98.7, PowerTalk.

Incident:

I called in with a question to Minister Hlabisa:

"I don't see any need for traditional leadership because we elect councillors, and that the Portuguese named some parts Natal in the 14th century and the British came up with Zululand in the 1800s." _

Host Mbuyiseni Ndlozi, on air, instructed Minister Hlabisa not to answer, stating I "know nothing about traditional leadership as I come from Soweto." _

Breaches:

1. *Clause 13(1) – Controversial Issues of Public Importance*

Verbatim: _"In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of

programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.”

Breach: The host censored my opposing view on traditional leadership and governance with a Cabinet Minister.

2. *Clause 14 – Discrimination*

Breach: I was stereotyped and excluded based on geographic origin, discriminating against Soweto residents.

3. *Clause 12 – Comment*

Breach: The host’s opinion _“he knows nothing” was presented as fact to justify censorship.

SYSTEMIC FAILURE – CLAUSE 15: LICENSEE OBLIGATIONS

Verbatim: _“Licensees shall exercise proper control over the material broadcast and shall ensure that the provisions of this Code are adhered to.”

Following the Ndlozi incident, I telephonically contacted Power FM. I spoke to a staff member named Thembeke, who referred me to Neo as the person in charge of complaints. I submitted a formal complaint via email to Neo on 30 April 2026.

No response was received by the deadline of 12:00, 30 April 2026. This demonstrates Power FM’s failure to address discrimination and exercise proper control over programming and complaints handling per Clause 15.

REMEDY SOUGHT

1. Full, unedited audio of both broadcasts
2. On-air correction and apology in the same time slot
3. Public statement that callers will not be discriminated against based on geographic origin or have numbers blocked for content
4. BCCSA ruling against Power FM

EVIDENCE ATTACHED

1. Copy of email sent to Neo, Power FM complaints department
 2. Confirmation no response received by 12:00, 30 April 2026
 3. Transcript of 28 April 2026 broadcast as set out above
- I confirm this complaint is based on broadcasts I personally participated in.

3.5 Clause 4.2(c) – Advocacy of Hatred based on Ethnicity and Incitement to Cause Harm*

No broadcaster shall broadcast material which amounts to advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.

Breach: During the live broadcast on 28 April 2026, Prof Pitika Ka Ntuli stated: “this comes from a level that I can not deal with, he must sort Himself Up, what he has said to me is silence.” This statement was made immediately after I challenged the concept of “pure Zulu” as an ethnic identity. The phrase denigrated me based on perceived social origin and ethnic status, and was used by a guest academic to shut down debate on a controversial issue of public importance relating to ethnicity. By dismissing my contribution on ethnic grounds and refusing engagement, the broadcast amounted to advocacy of hatred based on ethnicity which denigrates and excludes a caller, and constitutes incitement to cause harm by silencing dissent on ethnic identity issues. This is in breach of Clause 4.2(c) of the BCCSA Free-to-Air Code of Conduct.

4.5 Clause 4.2(c) – Advocacy of Hatred based on Ethnicity and Incitement to Cause Harm

No broadcaster shall broadcast material which amounts to advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.

Breach: During the PowerTalk broadcast in March 2026 hosted by Dr Mbuyiseni Ndlozi, I called in with a question to Minister Velenkosini Hlabisa regarding traditional leadership. To the best of my recollection, Dr Ndlozi instructed the Minister not to answer and stated words to the effect that I “know nothing about traditional leadership as I come from Soweto.” This statement stereotypes and excludes callers based on geographic origin. It amounts to advocacy of hatred based on ethnicity which denigrates and excludes residents of Soweto, and constitutes incitement to cause social harm by discouraging their participation in public debate. This is in breach of Clause 4.2(c) of the BCCSA.”

[3] The Broadcaster responded as follows:

“POWER 987’s RESPONSE TO COUNTS 1, 2, 3 AND 4 OF THE COMPLAINT BY MR SHANGASE

1. Power 98.7 (“Power 987”) notes the complaint by Mr Shangase, (“the Complainant”) arising from broadcasts aired on 28 April 2026, 07 May 2026, and on 14 May 2026.
2. The complaint alleges contraventions of Clauses 4.2(c), 12, 13 and 15 of the BCCSA Free-to-Air Code of Conduct. Power 987 respectfully denies that the broadcasts contravened the Code.
3. The Complainant revised and expanded the complaint on several occasions, including through updated submissions and an affidavit incorporating overlapping and, at times, differently framed allegations. To the extent that any allegation, characterisation or formulation of a complaint is not specifically addressed herein, this should not be construed as an admission by Power 987 of any contravention of the Code, all of which are expressly denied.

BACKGROUND AND CONTEXT

4. The broadcasts complained of formed part of live and unscripted Africa Month programming dealing with matters of language, identity, culture and history. The Month of May is popularly known as Africa Month, to honour the founding of the Organisation of African Unity (OAU), now the African Union, with Africa Day being specifically celebrated on May 25 as the highlight.
5. These broadcasts were robust public-interest discussions involving guests, callers and the host expressing differing and, at times, strongly held views on issues of public and historical significance.

CLAUSE 4.2(c): ADVOCACY OF HATRED AND INCITEMENT TO CAUSE HARM

6. Clause 4.2(c) prohibits the broadcasting of material which, judged within context, amounts to advocacy of hatred based on race, ethnicity, religion or gender and which constitutes incitement to cause harm. The broadcasts complained of do not come close to meeting this threshold.
7. In Count 1, the complainant relies primarily on the following statement by Prof Pitika Ka Ntuli:

“This comes from a level that I cannot deal with, he must sort himself up, what he has said to me is silence.” Properly viewed in context, the statement was made during a live debate in response to the Complainant’s contribution and reflected Prof Ntuli’s disagreement with the complainant’s views.

8. The statement did not:
 - 8.1 advocate hatred against the complainant or any ethnic group;
 - 8.2 encourage hostility or discrimination; or
 - 8.3 incite listeners to cause harm.
9. The Complainant further alleges that the remarks denigrated him based on perceived social origin and ethnic status. Respectfully, that interpretation is not supported by the actual wording used in the broadcast. At no stage did Prof Ntuli refer to the Complainant's social origin, ethnicity or ethnic status, either expressly or by implication. The remarks were directed at the Complainant's contribution to the discussion and not at his ethnic identity or social standing.
10. The Code sets a deliberately high threshold for hate speech. Strong disagreement, criticism or even dismissive language does not, without more, amount to advocacy of hatred or incitement to cause harm.
11. South African jurisprudence and BCCSA precedent make clear that hate speech requires considerably more than merely offensive or provocative speech. In *Qwelane v South African Human Rights Commission*¹, the Constitutional Court confirmed that hate speech requires both advocacy of hatred and incitement to cause harm. Similarly, in *Engelbrecht v 93.8 FM*², the BCCSA confirmed that advocacy and incitement are essential elements. "For content to constitute hate speech, it must amount to the advocacy of hatred based on race or ethnicity and must include incitement to cause harm. Advocacy and incitement imply promoting, encouraging, urging, or persuading others to act, or to rouse or stimulate action."
12. The broadcasts complained of involved robust debate and differing viewpoints on matters of public interest. They did not advocate hatred against, nor incite harm toward, the Complainant or any ethnic group.
13. In relation to Counts 3 and 4, the complainant alleges that subsequent broadcasts involving Prof Musa Xulu and Dr Mathole Motshekga perpetuated exclusion or hatred. Power 987 denies this. Those broadcasts simply continued broader public discussions on history, language and identity. The views expressed were academic and intellectual perspectives on matters of public debate and did not constitute hate speech as contemplated in Clause 4.2(c).

CLAUSE 12: COMMENT

14. Clause 12 permits broadcasters to air comment and criticism on matters of public importance, provided that such comment is clearly presented as opinion. The broadcasts complained of dealt with matters of public and historical significance, including identity, ethnicity, language and social history.
15. The views expressed by Prof Ntuli, Prof Xulu and Dr Motshekga were clearly aired in the context of live discussion, commentary and debate. Reasonable listeners would have understood the broadcasts to involve opinion, interpretation and intellectual engagement rather than definitive historical fact. Importantly, the Complainant himself participated directly in the original discussion and articulated his opposing views on air.

¹ *Qwelane v South African Human Rights Commission* and Another (686/2018) [2019] ZASCA 167; [2020] 1 All SA 325 (SCA); 2020 (2) SA 124 (SCA); 2020 (3) BCLR 334 (SCA) (29 November 2019)

² ADJUDICATION NO: 02/A/2026 [02-Engelbrecht-vs-93.8-FM-Adjudication.pdf](#)

16. The complaint appears, in essence, to arise from disagreement with the views expressed and from the Complainant not having participated in all subsequent discussions on related themes. Power 987 therefore denies that Clause 12 was contravened.

CLAUSE 13: CONTROVERSIAL ISSUES OF PUBLIC IMPORTANCE

17. Clause 13 requires broadcasters to make reasonable efforts to fairly present opposing points of view on controversial issues of public importance. Power 987 respectfully submits that this obligation was satisfied.
18. The Complainant participated directly in the original programme and was afforded an opportunity to challenge the views expressed during the live broadcast itself. Clause 13 does not require broadcasters to repeatedly feature every caller or participant in all subsequent programmes dealing with related subject matter. The obligation imposed by the Code is one of fairness and reasonableness, assessed contextually.
19. The subsequent broadcasts formed part of broader public discourse on matters of history and identity and were not broadcasts directed at the Complainant personally. Listeners were exposed to differing viewpoints on the issues discussed and fairness was achieved within the meaning of the Code. But crucially, the host Koen Moabelo pre-phased these broadcasts by referencing the contribution by the Complainant to these discussions.

CLAUSE 15: PRIVACY, DIGNITY AND REPUTATION

20. Clause 15 requires broadcasters to exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, while recognising that those rights may be overridden by legitimate public interest. Power 987 respectfully submits that Clause 15 was not contravened.
21. The broadcasts dealt with matters of legitimate public discussion relating to language, identity, culture and history. These are issues that regularly form part of public discourse and intellectual debate.
22. The Complainant voluntarily participated in the original discussion and directly engaged the views expressed by Prof Ntuli. This was therefore not a situation involving the unwarranted exposure of a private individual who had not entered the debate. Furthermore, the remarks complained of were directed at the Complainant's views and contribution during the discussion, rather than at his dignity, ethnicity, social standing or personal reputation.
23. At no stage did the broadcasts accuse the Complainant of criminality, dishonesty, misconduct or any conduct capable of materially damaging his reputation in the eyes of reasonable listeners. The mere fact that a participant in a live debate finds certain views offensive, dismissive or unfair does not, without more, establish a breach of Clause 15.

COUNT 2

24. In Count 2, the complainant alleges, based on his recollection, that Prof Ntuli presented historical views as fact, refused to substantiate them when challenged, and dismissed his contribution during the discussion. Power 987 respectfully denies that this constitutes a contravention of the Code.
25. The views expressed by Prof Ntuli were clearly aired in the context of opinion, interpretation and intellectual engagement on contested historical and cultural issues. The Code does not prohibit participants in a live debate from strongly disagreeing with

one another, nor does it require discussions of this nature to conform to a particular historical or interpretative viewpoint. Importantly, the Complainant himself participated directly in the programme and was afforded an opportunity to challenge the views expressed on air.

26. Reasonable listeners would have understood the discussion to involve differing perspectives and robust commentary rather than definitive statements of objectively verifiable fact.
27. The second Count 2 of the Complainant's complaint related to a broadcast by Dr. Mbuyiseni Ndlozi's interview with Mr. Velenkosini Hlabisa, Minister of Cooperative Governance and Traditional Affairs. The Complainant incorrectly states that this was broadcast in March 2026.

We submit that this complaint is out of time as that broadcast was aired on 22 January 2026 and is therefore out of date.

CONCLUSION

28. Power 987 respectfully submits that:

- 28.1 the broadcasts constituted bona fide public discussion and commentary on matters of public importance;
- 28.2 the remarks complained of do not meet the threshold for advocacy of hatred or incitement to cause harm contemplated in Clause 4.2(c);
- 28.3 the complainant was afforded an opportunity to express his views during the original broadcast;
- 28.4 the station complied with its obligations in terms of Clauses 12, 13 and 15 of the Code;

And

- 28.5 no contravention of the Free-to-Air Code has been established.

29. Power 987 further denies any allegation that the complainant was censored, excluded from participation, or had his number blocked on account of the views he expressed during the broadcasts complained of. Accordingly, there is no basis for the 4th remedy that he seeks. Accordingly, Power 987 respectfully requests that the complaint be dismissed in its totality.

30. We have attached a recording of the broadcast where Prof Ntuli was interviewed.”

[4] The Complainant replied as follows:

- “1. I refer to Power 98.7's response dated 17 June 2026. I deny their version. Power 98.7 misleads BCCSA. My reply follows their paragraphs:
- 2. * Para 7-9: Prof Ntuli insult*
Power 98.7 says “no reference to social origin/ethnicity, just disagreement”. False. Line 17 + Line 16 + Line 29 prove attack on dignity + wrong assumption about SOWETO ethnicity. Not debate. *Prof Pitika Ka Ntuli says our languages are not pure. Maybe AFRIKAANS is Pure.*
If no language is pure, then no language is pure. Clause 18 Accuracy breached.

3. ***Para 18: Clause 13 Fairness + Clause 17 Discrimination***
Power 98.7 says "Complainant had opportunity, Clause 13 satisfied". False. Line 18B + Line 20 prove I was silenced when *Dr Ndlozi says the people of SOWETO know nothing about traditional leadership: "Don't answer him because he is from SOWETO, he knows nothing about traditional leadership"* then blocked me. *Dr Mbuyiseni Ndlozi instead of dealing with me, He drags every Sowetan to something he knows little or nothing about.* Koena admits "suspend for a certain period, That Is honesty" but I remain blocked. No fairness. Clear discrimination based on social origin/ethnicity.
4. ***Para 24-25: Count 2 – Fact vs Opinion***
Power 98.7 says "opinion, not fact". False. Line 8 + Line 11B + Line 15A + Line 22 + Line 23 prove Prof stated "PURE ZULU PURE XHOSA" as fact, denied it, and tapes are with BCCSA. Clause 18 Accuracy breached.
5. ***Para 27: "Out of time 22 Jan 2026"***
Power 98.7 is wrong. Breach is ongoing. Line 18B: Blocking + producer warning + complaints ignored from 2 Feb 2026 to 28/04/2026. Not just broadcast date.
6. ***Para 29: "No blocking/censorship"***
False. Line 18 + Line 18B + Line 20. Numbers blocked. Koena admitted suspension on air.
7. ***Public Interest / Challenge to Academics***
After listening to both Dr Mbuyiseni Ndlozi and Professor Pitika ka Ntuli's misleading statements on radio, it is worrying because our children and grandchildren will be forced to read distorted History and many crucial parts of our History will be left out. *No parent Rich or Poor can allow his/her children/grandchildren to be taught istorted/inaccurate/questionable versions of our History.* Then Minister Angie Motshekga appointed a Task Team that will rewrite our History headed by Prof Sifiso Ndlovu and that History is going to be Compulsory From Grade Four. If our History can be distorted and some people allowed to be self appointed language specialists, then I don't know where to cry or try to prevent such happening in front of our eyes with undisputable evidence that the two academics are making me doubt every academic I come across. *Tribalism IS bad. Can the Prof explain what is a PURE language? The answer is no.* I pray that the BCCSA forces Professor Ntuli and Dr Mbuyiseni Ndlozi's dangerous and humiliating statements to be retracted. I feel Historians/Academics are getting away with inaccurate, questionable versions of our History. We discuss these matters in the streets where we learn more than in any classroom. I don't have to be an academic to know that language is not an identity marker, or to know how traditional leadership structures, functions and authority operate. I don't have to agree with Dr Ndlozi and Professor Ntuli just because they are academics and I'm not recognised by any University. Therefore I don't know what the two uninformed academics know or studied. That is why my challenge still stands to both academics on any platform: Radio, TV, or any public platform including top universities in South Afrika.
8. ***Constitutional Duty***
BCCSA's job is to protect human dignity, equality and freedom of expression per Section 16 + 10 of the Constitution. Power FM + Prof Ntuli + Dr Ndlozi violated all three. They attacked my dignity, discriminated against my social origin, and blocked my voice. If BCCSA allows this, then tomorrow it will be your child, your mother, your gogo who gets called "PURE" or "nothing" on national radio. I am not fighting for myself. I am fighting for every South African who has no degree but has truth in their chest. Do your duty.
9. ***50 Years of SOWETO Uprisings - 1976 to 2026***
This year is the 50th anniversary of the SOWETO UPRISINGS. Revolting Against BANTU EDUCATION started the whole fire. *The majority of people from SOWETO and other

surrounding Townships Did Not enjoy their youth fighting for better Education system.* Many never went back to school, many died, many went to exile, many were jailed. *Our Brothers and Sisters died so we could speak truth to power. TSIETSI MASHININI and MBUYISA MAKHUBU, KHOTSO SEATLOLO and many other unsung heroes and heroines* died for our freedom to speak. In 2026, Dr Ndlozi uses national radio to say *‘‘Don’t answer him because he is from SOWETO, he knows nothing’’* and blocks me. BCCSA, is this the freedom Tsietse, Mbuyisa, Khotso and the unsung heroes died for? Is this what our mothers mourned for 50 years? We will not allow SOWETO to be disrespected again. Not in the year we remember the blood.

RELIEF SOUGHT:

1. Finding that Power 98.7 breached Clauses 17, 18, 19 of the Code
2. Apology to be broadcast by Power FM, Prof Ntuli: *‘‘People don’t speak PURE language. Maybe AFRIKAANS is not Pure either. Tribalism IS bad’’*
3. Apology + Retraction to be broadcast by Dr Mbuyiseni Ndlozi to the people of SOWETO: *‘‘Dr Ndlozi says the people of SOWETO know nothing about traditional leadership. Don’t answer him because he is from SOWETO, he knows nothing about traditional leadership. Dr Mbuyiseni Ndlozi instead of dealing with me, He drags every Sowetan to something he knows little or nothing about. They know nothing about traditional leadership despite having RELATIVES that we visit frequently, he never resided in SOWETO’’*
4. Unblock my numbers immediately
5. Sanction as BCCSA deems fit

Tapes/transcripts with BCCSA per Line 23.”

EVALUATION

- [5] The complaint requires some disentangling before the merits can be reached. It was lodged and then revised and expanded on several occasions, with the clause citations shifting materially between submissions. The founding complaint relies on Clauses 12, 13, 14 and 15 together with Clause 4.2(c); the reply abandons or supplements these with Clauses 17, 18 and 19 and introduces, for the first time, a complaint of inaccuracy. A complainant may not recast the complaint in reply so as to confront the Broadcaster with grounds it had no fair opportunity to answer. The audi alteram partem principle confines the Commission to the case the Broadcaster was called upon to meet. The grounds raised for the first time in reply are accordingly not properly before me.

- [6] More fundamentally, the complaint is pleaded against an instrument that does not govern this broadcaster. Power FM 98.7 is a free-to-air sound broadcasting service licensee and a member of the BCCSA. The operative instrument is the BCCSA Free-to-Air Code of Conduct. Several of the provisions on which the Complainant relies do not appear in that Code at all.
- [7] There is no **"Clause 14 – Discrimination and Denigration"**. Clause 14 of the Free-to-Air Code deals with Elections, a matter expressly outside the BCCSA's jurisdiction. There is no **"Clause 15 – Licensee Obligations"** requiring the broadcaster to "exercise proper control". Clause 15 is Privacy, Dignity and Reputation. And the Code ends at Clause 16. There are no Clauses 17, 18 or 19, and no free-standing "accuracy" clause beyond the News provision in Clause 11. The wording the Complainant quotes for *"discrimination and denigration"* and *"proper control"* appears drawn from the superseded 2003 Code or the ICASA-prescribed code, neither of which is the Code under which Power FM is adjudicated.
- [8] I must stress that I am not bound by a complainant's labels and I will evaluate the broadcast against the provisions actually engaged on the facts.
- [9] The complainant raises Clause 4(2)(c), which deals with hate speech, Clause 12 which deals with comment, Clause 13 which deals with controversial issues of public importance and last but not least Clause 15 which deals privacy, dignity and reputation.
- [10] A threshold objection disposes of the second count before merits. The Complainant places the Ndlozi/Hlabisa broadcast in March 2026 *to the best of [his] recollection*. The Broadcaster corrects the date to 22 January 2026 and contends the count is out of time. That correction is not seriously met, the Complainant's own date being expressly tentative, and a complaint directed at

the content of that broadcast is lodged well outside the period permitted by the Rules. The Complainant's answer, that the breach is "ongoing" because his number remains blocked, conflates two distinct things. The first being the content of a past broadcast, which the Code governs and which is time-barred, and an operational decision to screen or block a caller's line, which is not broadcast "material" judged within context and which the Code does not regulate. There being no continuing broadcast, the continuing breach argument cannot revive an out-of-time content complaint. The Ndlozi/Hlabisa count is not entertained on its merits, and the blocking grievance falls outside the Commission's content jurisdiction.

[11] Now I turn to the hate speech allegation under Clause 4(2)(c). It is the gravest charge the Complainant brings, and the one most plainly not made out. Clause 4(2)(c) prohibits material which, judged within context, amounts to the advocacy of hatred based on race, ethnicity, religion or gender, and which constitutes incitement to cause harm. Those two elements stand together. There must be advocacy of hatred, and there must be incitement to harm. The one without the other does not suffice, and the bar set by each is a high one. The Constitutional Court put the matter beyond doubt in *Qwelane v South African Human Rights Commission*³ holding that both elements must be present. This Commission took the same approach in *Engelbrecht v 93.8 FM*, where it held that advocacy and incitement connote the promoting, encouraging, urging or persuading of others to act, and that the mere taking of offence cannot be equated with hate speech, nor personal discomfort with the promotion of hatred.

[12] Two matters dispose of this ground before I even reach the words used. First, the Complainant pins his case to "*social origin*" and "*geographic origin*", that he was slighted for being from Soweto. But neither is a listed ground in Clause 4(2)(c). The clause is confined to race, ethnicity, religion and gender, and a complaint

3 2021 (6) SA 579 (CC)

resting on origin of that kind does not engage it. Second, even if it did, Clause 5 exempts a bona fide discussion, argument or opinion on a matter of public interest from the reach of Clause 4 altogether. An Africa-Month debate on language, history and identity is precisely such a discussion. On either footing the ground falls away.

[13] Measured against that test, Prof Ntuli's words, **"this comes from a level that I cannot deal with, he must sort himself up, what he has said to me is silence"**, fail at both elements. They advocate nothing against any group and incite no listener to do anything to anyone. On any reasonable listening they are a refusal to engage further with a particular contribution in a live exchange, directed at the contribution and not at the Complainant's ethnicity or origin. As in Engelbrecht, robust or dismissive language in the course of socio-political commentary does not cross the threshold. There is, moreover, an evidential irony. The Complainant was himself advancing an anti-tribalist position, and Prof Ntuli's response came precisely as he resisted being misquoted as having asserted a "pure Zulu" identity he expressly denied using. The ground is not established.

[14] I turn to the comment ground under Clause 12. Clause 12(2) asks that comment be an honest expression of opinion, presented so that it is plainly comment, and made on facts truly stated or fairly indicated. It does not, as *Engelbrecht* makes plain, require the underlying facts to be proven or objectively justifiable, only that they be fairly indicated. A listener who heard this broadcast in full would have taken the contributions about the "purity" of languages and the historical formation of ethnic identities for what they were, opinion and intellectual argument, not assertions of settled fact. The Complainant himself came onto the air and contested those views, which only confirms that this was discussion and not the handing-down of fact. His complaint that Prof Ntuli stated "pure Zulu, pure Xhosa" as fact cannot survive scrutiny, which has Prof Ntuli denying the very

phrase. Nor does Clause 11 assist him, that provision governs news, and this was a live discussion programme, not a bulletin. The ground is not established.

[15] I come then to Clause 13, on which the Complainant leans most heavily. The clause is directed at the fair presentation of opposing viewpoints, and in particular at protecting a person whose views are criticised in a programme, who must be afforded a right of reply. On the facts that protection is not engaged. I must stress this from the onset, the Complainant was not the subject of the broadcast and his views were not the broadcast's target, he was a caller who telephoned in to challenge the guest, and the station carried that challenge live and unedited. He was, in other words, the very voice of the opposing view that Clause 13 exists to secure. A clause designed to ensure dissent reaches the air is not breached by a broadcast that put the dissenter on the air. And were it necessary to go further, Clause 13(1) asks for reasonable efforts to present opposing views, not for a caller to be carried in perpetuity or featured in every later programme on a kindred theme, while Clause 13(2), the right of reply, presupposes a person criticised by the programme, which the Complainant was not. What the clause guarantees, at most, is the opportunity to be heard, not that the guest must satisfy him, nor that he must have the last word. The ground is not established.

[16] That leaves Clause 15, privacy, dignity and reputation. The clause demands exceptional care in matters touching the privacy, dignity and reputation of individuals, subject always to a legitimate public interest. The remarks here were aimed at the Complainant's contribution to a debate he chose to enter, not at his dignity, his ethnicity or his standing. A person who steps into a live and robust debate and meets dismissiveness from another participant has not, without more, suffered an impairment of dignity that the Code recognises; and a national discussion on language, history and identity is squarely the kind of public interest the clause contemplates as capable of overriding. The remaining grievance, that Power FM failed to "*exercise proper control*" or to answer his email by a deadline

of his own setting, is a matter of customer relations, not of content, and the Code's complaints machinery is the very BCCSA process he has invoked. The ground is not established.

[17] While the complainant's concerns are sincerely held, the BCCSA's remit is not to adjudicate questions of historical truth but to ensure compliance with the applicable broadcasting codes. By upholding these codes, the BCCSA safeguards the exchange of robust—if at times uncomfortable—public debate, thereby enabling the general public, as in the case of the complainant, to participate fully and express their views.

[18] No contravention of the Free-to-Air Code has been established on any ground properly before me. The Ndlozi/Hlabisa count is in any event out of time and the relief sought cannot be granted.

The complaint is accordingly dismissed.



**ADV R.T MAKOANYANA
COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION**