CASE NUMBER: 04/2026

TRIBUNAL DATE: 11 JUNE 2026
JUDGMENT RELEASE DATE: 01 OCTOBER 2026

SOLIDARITY TRADE UNION **COMPLAINANT**

VS

eNCA **RESPONDENT**

BCCSA TRIBUNAL: **MR BRIAN MAKEKETA (TRIBUNAL CHAIREPERSON)**
ADV RETHABILE MAKOANYANE
PROF SANDRA FERREIRA

FOR THE COMPLAINANT: MR ANTON VAN DER BIJL; AND MRS KARLA ENDRES.

FOR THE RESPONDENT: MR DAN ROSENGARTEN AND MR RICHARD CHEMALY FROM ROSENGARTEN & FEINBERG ATTORNEYS.

In the matter of Solidarity Trade Union vs eNCA, Case 03/2026 (BCCSA), the Tribunal found that the broadcaster contravened Clause 28.1.1 read with Clause 28.1.3 of the Code for Subscription licensees. . AfrForum vs eNCA, Case 04/2026 (BCCSA).

SUMMARY

A complaint was received about a news anchor who attributed the spreading of genocide stories to Afriforum and Solidarity during the Introduction to a formal news programme. The Tribunal found that the statement was not a comment in accordance with clause 28.2.2 but that the broadcaster contravened Clause 28.1.1 read with clause 28.1.3.

JUDGMENT

R MAKOANYANA

[1] A complaint was lodged by Solidarity Trade Union against the eNCA programme, *The Morning South African Show* of the 25th of March.

[2] **The complaint reads as follows:**

"“The complainant resides in the Republic of South Africa and lodges this complaint in its own name as the party directly affected by the broadcast.

The complainant confirms that it has personally viewed the impugned broadcast.

This complaint is lodged within thirty (30) days of the broadcast.

2. BROADCASTER

Broadcaster: eNCA, Programme: eNCA news broadcast, Date of broadcast: 25 March 2026 Time of broadcast: 06:09 and 07:28, Platform: Television broadcast.

3. DETAILS OF THE IMPUGNED CONTENT

On the morning of 25 March eNCA news presenters discussed an earlier interview done on their People's Court show with AfriForum CEO Kallie Kriel about US president Donald Trump's utterances about a genocide happening in South Africa.

In this discussion the presenters/reporters, Mashego Rahlaga and Dan Moyane, gave an introduction to the story and both stated in substance that:

"AfriForum and Solidarity have been in the United States spreading messages about land grabs and genocide."

This statement conveyed that Solidarity promotes or has promoted claims that genocide is taking place in South Africa.

4. CLAUSES OF THE CODE RELIED UPON

The complaint is based on contraventions of the Code of Conduct for Subscription Broadcasting Service Licensees and the following clause:

Clause 28.1.1 — News must be reported truthfully, accurately and fairly.

5. FACTUAL BACKGROUND

5.1 Solidarity has never stated that a genocide is taking place in South Africa.

5.2 Media outlets in South Africa have previously been found at fault by the Press Ombudsman for incorrectly attributing claims of "white genocide" to Solidarity.

5.8 Despite this, the broadcast again attributed such views to Solidarity without evidence.

6. BREACH OF THE CODE

The broadcast attributed a position to the complainant which it does not hold.

The statement that Solidarity spread messages about genocide constitutes a misrepresentation of fact.

The matter concerns a controversial issue of public importance, yet the broadcaster did not present the complainant's position fairly.

The broadcaster therefore failed to comply with the requirements of truthful, accurate and fair reporting.

7. HARM CAUSED

The statement implies that Solidarity spreads false information internationally and promotes unfounded claims of genocide.

This damages the complainant's reputation. The harm was aggravated by repetition of the same allegation on the broadcaster's own platforms.

8. RELIEF SOUGHT

The complainant requests that the Commission:
- Find that the broadcast contravened the Code
- Direct the broadcaster to broadcast an apology, correction or clarification
- Direct that the correction state that Solidarity has not claimed that genocide is taking place in South Africa

9. CONCLUSION

The broadcast contained a material misrepresentation of the complainant's views and failed to comply with the requirements of truthful, accurate and fair reporting.

The complaint therefore falls within the ambit of the Code and should be upheld.''

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

"**RE: ENCA V SOLIDARITY - SA MORNING SHOW – WHITE GENOCIDE NARRATIVE**

[1] This letter serves as our response to the complaint lodged by Solidarity Trade Union ("**the Complainant**") regarding the comments made by presenters of *The South African Morning Show* on 25 November 2025 between 06h09 and 06h11 ("**the Comment**").

[2] The Complainant alleges that the Comment, made in reference to an interview conducted the previous day with the CEO of AfriForum (**"the interview**"), contravenes Clause 28.1.1 of the BCCSA Code of Conduct for Subscription Broadcasting Service Licensees ("**the Code**").

[3] The basis of the complainant is that the comment made by presenters falsely report that AfriForum and the Solidarity lobby groups are responsible for propagating the "white genocide" narrative in the United States of America.

[4] The Registrar of the BCCSA requested our response in terms of the clause stated by the complainant.

News clause 28.1.1

[5] At the outset, we submit that this Commission has well established that the News Clause 28.1.1 of the Code, which governs the truthfulness or accuracy of news, is not applicable to the Comment which was in a discussion segment within the news program[1]. The statement in *Churr v eNC*[2] should thus be noted in highlighting the fact that:

> While this interview was conducted during the news programme it is clear that Ms. Kirsten was being interviewed regarding her views on gun control. Her views on the topic do not qualify as news.

[6] Similarly, the Comment at issue arose in the context of presenter-led discussion and analysis following an interview. It constituted commentary and opinion, rather than the reporting of factual news.

[7] It is further noteworthy that a separate but substantially similar complaint[3] has been lodged by AfriForum concerning the same subject matter, namely that the presenters allegedly misrepresented AfriForum and Solidarity as proponents of the "white genocide" narrative in the United States.

[8] In that matter, the complaint was admitted under Clause 28.2.2 of the Code (comment), and not under Clause 28.1.1 (news), thereby reinforcing the distinction between news reporting and commentary.

[10] In light of the above, we submit that Clause 28.1.1 is inapplicable to the present matter, and that the complaint is misplaced insofar as it relies on the news provisions of the Code.

[4] The Complainant replied as follows:

"RE: Response to eNCA submission – SA Morning Show

We acknowledge receipt of eNCA's response. However, their argument does not address the central issue raised in the complaint.

The nature of the broadcast

1. eNCA argues that the statement in question was "commentary" rather than news. This does not align with how the content was presented to viewers.
2. The statement was made by a news anchor during the introduction of a formal news report. At no point was it clearly indicated that the viewer was now moving from news reporting to opinion or analysis or was it labelled as commentary.
3. In this context, a reasonable viewer would understand the statement as part of the factual framing of the news item. eNCA cannot retrospectively reclassify it as "commentary" when it was presented as part of a news broadcast on their morning news program and the introduction leading into a news story.

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[1] Para 6.3 *Rustenburg Local Municipality vs eNCA* Channel 403, Case No: 08/2020 (BCCSA).

[2] Case no. 10/2018

[3] Case no. 29/A/2025

Comment vs fact

5. Even if the Commission were to somehow accept that the statement forms part of commentary, that still does not resolve the matter.

6. The statement contains a clear factual claim, namely that Solidarity and AfriForum are responsible for "spreading messages of genocide" in the United States.

7. That is not a matter of opinion. It is a factual allegation that is either true or false, and it is capable of verification. One can observe this from previous rulings on the matter by the Press Ombudsman, arising from similar and repeated complaints by Solidarity and AfriForum.

8. The cases cited by eNCA in their submission deal with the expression of views. This matter concerns a factual claim about identifiable organisations. The distinction is important.

The core issue remains unanswered

9. eNCA's response does not even attempt to demonstrate that the statement is accurate. Instead, it seeks to avoid the accuracy requirement by labelling the statement as commentary.

10. This approach is problematic. A broadcaster cannot avoid its obligation to be accurate simply by framing a factual allegation as opinion.

Conclusion

11. The statement was presented within a news broadcast and should be assessed under the applicable news provisions.

12. Alternatively, even if it is treated as commentary, it contains a factual claim that must meet the standard of accuracy required by the Code.

13. The complaint is therefore correctly framed and should be considered on its merits."

EVALUATION

[5] The threshold question is whether the impugned words fall to be assessed under Clause 28.1 (News) or Clause 28.2 (Comment) of the Code of Conduct for Subscription Broadcasting Service Licensees.

[6] Clause 28.1.1 requires that news be reported truthfully, accurately and fairly, and Clause 28.1.3 provides that only that which may reasonably be true, having due regard to the source, may be presented as fact, where a report is founded on opinion, supposition or allegation, this must be indicated clearly as such.

[7] Clause 28.2.1 permits licensees to broadcast comment on matters of public importance, and Clause 28.2.2 qualifies that permission, in that comment must

be an honest expression of opinion, presented in such manner that it appears clearly to be comment, and made on facts truly stated or fairly indicated.

[8] The Broadcaster posits that Clause 28.1.1 has no application because the statement arose in a discussion segment rather than a news bulletin proper, and that the true character of the segment is commentary. That submission must be tested against what was actually broadcast, not accepted on the strength of the label the Broadcaster prefers.

[9] The words complained of were spoken twice by the news anchors, Ms Rahlaga and Mr Moyane, in the course of introducing a news item, in these terms, *AfriForum and Solidarity have been in the United States spreading messages about land grabs and genocide.* Clause 28.1.3 contemplates that material founded on opinion or allegation must be presented in a manner that indicates clearly that it is such. No such indication accompanied this statement. It was delivered as an unqualified assertion in the introduction to a news item, and not within an interview in which a third party was expressing a view of their own. On that footing the statement is properly assessed under Clause 28.1.1, and not under Clause 28.2.

[10] The complaint is directed specifically at the attribution of genocide to Solidarity, it does not put the *land grabs* reference in issue, and neither the Broadcaster's response nor the Complainant's reply raises it as a separate point of dispute. The Tribunal confines its enquiry accordingly to the genocide attribution

[11] On that attribution, the Complainant states plainly that Solidarity has never claimed that genocide is taking place in South Africa. The Broadcaster does not dispute that Solidarity has never made such a claim, nor does it advance any factual basis for the statement. Its only response is that the news clause does not apply. Where a broadcaster is confronted with a specific denial of a factual attribution and does not address the denial of the factual attribution but questions

whether the correct clause is being applied, the correctness of the factual attribution becomes questionable because the denial is not rebutted.

[12] The broadcast accordingly attributed to the Complainant a position it does not hold. That is a misrepresentation of fact within the meaning of Clause 28.1.3. The complaint succeeds. I find that the Broadcaster contravened Clause 28.1.1, read with Clause 28.1.3, of the Code.

[13] Given this finding, the parties are directed to file submissions on the aggravating and mitigating factors relevant to sanction to the Registrar of the BCCSA:

Complainant: "After careful consideration, we have decided to retain the sanctions proposed in our original submission. We therefore consider the following to be an appropriate sanction:

1. Solidarity submits that a mere reprimand **would not be sufficient** in the circumstances.

2. The impugned statement was **serious**. It associated Solidarity with the spreading of messages of genocide, despite the absence of any factual basis for that assertion and despite the fact that eNCA either knew, or reasonably ought to have known, that the allegation was at least disputed.

3. The broadcast therefore constituted a material departure from the standards of truthful, accurate and fair reporting required by the Code.

4. Solidarity accordingly requests that the Tribunal:

- find that eNCA contravened clause 28.1 of the Code, alternatively clause 28.2; *(refer to judgment)*

- direct eNCA to broadcast an oral apology and correction during the same programme, or during a substantially similar time slot;

- direct eNCA to publish a written apology and correction on its website and any platform on which the impugned report was published or promoted; and

- impose an appropriate sanction, including a fine, as the Tribunal deems fit.

Proposed wording of an appropriate apology: "*eNCA apologises to Solidarity for broadcasting on 25 March 2026 that Solidarity had been in the United States spreading messages of land grabs and genocide. eNCA accepts that no factual basis was provided for the assertion that Solidarity had spread messages of genocide. eNCA regrets the error and apologises for the inaccurate and unfair impression created."*

Thanks for your consideration."

BROADCASTER: " RE: ENCA V SOLIDARITY TRADE UNION —SUBMISSION ON SANCTION

This letter is in response to the draft adjudication no. 03/2026 in which the BCCSA requested both the Broadcaster and Complainant to file submissions on sanction.

1. The Adjudicator seems to have found against the Broadcaster on the basis that the broadcaster does not "advance any factual basis for the statement" and that "its only response is that the news clause does not apply"

2. This is plainly incorrect considering that the broadcaster sat in a Tribunal where is advanced arguments in relation to a contravention of the comment clause. The arguments of the Tribunal hearing appear to have been completely ignored.

3. In finding against the Broadcaster the Adjudicator also appears to misunderstand the application of the news clause and ignored BCCSA jurisprudence.

4. Importantly in mitigation of sanction, there has been no finding of dishonesty, malice, recklessness, deliberate misinformation, actual harm or intentional violation of the Code. There is one impugned sentence.

5. The broadcaster respectfully submits that, having regard to the nature and circumstances of the contravention actually found by the Tribunal, a reprimand is the appropriate and proportionate sanction.

6. The Tribunal did not find that the broadcaster deliberately broadcast false information.

7. Notably, this was not a case of the broadcaster deliberately ignoring the Code. But rather the contravention arose because the formulation of the statement was not presented in a manner indicating that it was actually an opinion.

8. The broadcaster accepts the need, where appropriate, to distinguish sufficiently clearly between a presenter's comment and fact.

9. Those considerations mitigate against the imposition of any sanction more severe than a reprimand. A reprimand will mark the Tribunal's disapproval of the formulation used and will provide clear guidance for future broadcasts. There is no basis upon which a more intrusive sanction is required in order to achieve those purposes.

22. This submission should not be interpreted as accepting of the Commissioner's decision on the draft adjudication. We are considering our options to appeal this decision.

10. The broadcaster respects the role of the BCCSA in maintaining standards applicable to broadcasters and has taken note of the Tribunal's interpretation and application of the Code in the present matter.

11. The appropriate sanction must remain proportionate to the contravention actually established.

12. A reprimand is thus appropriate, proportionate and sufficient sanction in line with the precedent set by the BCCSA."

SANCTION

[14] Both parties filed submissions on sanction, and these are set out above.

[15] Much of the Broadcaster's submission goes to the merits rather than to sanction. The Broadcaster says that the arguments it made at the hearing were not considered, and says it is considering an appeal. Those are matters for an appeal. At this stage the Tribunal proceeds on the finding it has made, that the Broadcaster contravened Clause 28.1.1, read with Clause 28.1.3, of the Code of Conduct for Subscription Broadcasting Service Licensees.

[16] The first item of relief the Complainant seeks is a finding that eNCA contravened Clause 28.1, alternatively Clause 28.2. That relief is not a sanction, and that has already been stated in the judgment. The finding is confined to Clause 28.1.1 read with Clause 28.1.3. No finding is made under Clause 28.1.2 or Clause 28.2, and none can be made by way of sanction.

[17] The Tribunal takes the following into account in the Broadcaster's favour:

[19.1] There is no finding of dishonesty, malice or deliberate misinformation.

[19.2] The contravention concerns a single statement.

[19.3] The Broadcaster accepts that it must distinguish clearly between presenter's comment and fact.

[18] The Broadcaster submits that a reprimand is enough. The Tribunal does not agree. A reprimand is addressed to the Broadcaster, and it tells the viewers who heard the statement nothing. The harm here is a false attribution made before an audience. It can only be remedied by correcting the record before that audience. An apology and correction are therefore the appropriate sanction.

[19] A fine is not warranted. The finding does not rest on deliberate or reckless conduct, and the apology remedies the harm the contravention caused. Imposing a fine as well would go beyond what the contravention requires.

[20] The apology must match the finding. The Tribunal confined its enquiry to the attribution of genocide messaging, because the reference to land grabs was not in issue. The Complainant's proposed wording includes that reference, so it has been adjusted.

[21] **The following sanction is imposed:**

The Broadcaster is directed to broadcast the following apology on The South African Morning Show, between 06:00 and 07:30, on a weekday within 36 hours of receipt of the judgment.

A presenter of the programme must read it on air:

"On 25 March 2026, presenters on The South African Morning Show stated that AfriForum and Solidarity had been in the United States spreading messages about genocide. Solidarity has not claimed that a genocide is taking place in South Africa, and the statement attributed to Solidarity a position it does not hold. The Broadcasting Complaints Commission of South Africa has found that the broadcast contravened clause 28.1.1, read with clause 28.1.3, of the Code of Conduct for Subscription Broadcasting Service Licensees. eNCA apologises to Solidarity for the inaccurate and unfair impression created."

[22] Prior to the broadcast, the Broadcaster must notify the Registrar of the BCCSA in writing of the date and time at which the apology will be aired, so that the Registrar may in turn inform the Complainant who may wish to view it. The Broadcaster is further directed to submit the broadcast to the Registrar within twenty-four (24) hours of the date of its broadcast, as proof of compliance.



ADV RETHABILE MOKOANYANA
BCCSA COMMISSIONER

COMMISSIONERS MAKEKETA AND FERREIRA CONCURRED