



P.O.Box 412365 • Craighall • Tel (011) 325-5755 • Fax (011) 325-5736 • e-mail: bccsa@nabsa.co.za
No 2 Albury Park • Magalieszicht Ave • Dunkeld West • 2196 • www.bccsa.co.za

CASE NUMBER: 26/2014

DATE OF HEARING: 14 AUGUST 2014
JUDGMENT RELEASE DATE: 08 SEPTEMBER 2014

MATHE

COMPLAINANT

vs

SABC (METROFM)

RESPONDENT

TRIBUNAL: **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**
 MS G HARPER
 PROF HP VILJOEN (DEPUTY CHAIRPERSON)
 MR B MAKEKETA (DEPUTY CHAIRPERSON)
 ADV B MMUSINYANE

FOR THE COMPLAINANT: The Complainant was unable to attend.

RESPONDENT: Mr Timothy Magampa, Acting Manager, Broadcasting Compliance, Policy and Regulatory Affairs, accompanied by Mr Nyiko Shimbambo Compliance Officer Broadcasting Compliance and Legal and Regulatory Affairs, Ms Hazel Tlhabanyane, Acting Station Manager and .

Promoting crime – cynical jest not amounting to promotion of crime - Mathe vs SABC (Metro Fm), Case: 26/2014(BCCSA)

SUMMARY

The complaint was that a presenter had promoted the use of dagga. It was held that what he said amounted to cynical jest. The words did not amount to the promotion of crime within the definition of “incitement” to a crime as held by the Appellate Division

of the Supreme Court. Promotion” has been held by the BCCSA as having the same meaning as “incitement”.

The complaint was not upheld.

JUDGMENT

JCW VAN ROOYEN SC

[1] A complaint was received in regard to a broadcast by MetroFM, one of the radio stations of the South African Broadcasting Corporation. The Registrar decided to entertain the complaint and referred the matter to me. I, in turn, decided that the matter should be heard by a Tribunal.

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

“I listening to Metro-fm during the drive time show called The Touch Down, which is presented by Tbo-Touch. The date was 4th July 2014 just after 3pm. He had an interview with an American artist by the name of Wiz Khalifa. The interview with the artist was regarding his upcoming visit to the country. What I found rather disturbing about the interview was some of the questions asked by Tbos and comments made during that brief interview.

Tbos asked Wiz what he was looking forward to in the country and the response was: “I’m looking forward to the weed.” Granted, Tbos had no control over that response, but he continued to entertain the artist regarding the weed, and he (Tbo-Touch) went as far as saying that “WE GROW THE BEST IN THIS COUNTRY”. Furthermore, TBO-Touch told the artist that he once hosted Snoop Dogg (another weed smoking artist from America) and supplied him with quality weed, and that when Wiz arrived, Tbo’s would be sure to get him some. Wiz replied by saying: “If its good enough for Snoop, then it sure good enough for me”. And the final straw was when Tbo’s said to Wiz, if he was not able to entertain him when he arrives, he would go as far as sending him the weed at the airport.

Firstly, I was travelling with my son from school in the car, and he had to endure this. Considering that the kids at school have been reprimanded time and again about weed and drugs in general yet we have Radio Jocks publicly promoting the stuff on a National broadcasters platform. Is Tbos a dealer perhaps?

I hope this will be treated with the urgency it deserves, and that foolish jock be removed from our airwaves.”

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

“BCCSA COMPLAINT: THANDO MATHE - METROFM - TOUCHDOWN 326 - 4.6.2014 - 15.00

In respect of the above-mentioned complaint, please find our comments as follows.

1. We thank the complainant for drawing this to our attention and apologise for the inconvenience caused to her during the broadcast through what we believe was a misunderstanding of remarks made in jest by the presenter.
2. The station and the SABC most definitely do not endorse the promotion and/or distribution of illicit substances in any way, nor does the presenter in question, Tbo Touch.
3. The premise of the interview was that it is common cause among prominent figures in in American Hip Hop culture that they are widely associated with the use of cannabis, referred to as 'weed' in the interview.
4. The presenter specifically asked the artist whether he would offer weed to his children, to which he answered in the negative. The presenter's commitment to fighting drug usage has seen his Foundation raise money in 2013 to build a children's clinic in Diepsloot to fight child and substance abuse. He has in fact received a commendation from National Commissioner of Police General MV Phiyega in recognition of his service. He has publicly denounced drug and children abuse through these platforms.
5. The comments by the presenter regarding delivering weed to the artists at the airport were made in jest, with the full knowledge and understanding that if he were to actually do something like this, it would be illegal. We concede that the way it might have come across to the listener was that he might actually do this, but he would surely not have run the risk of being arrested for an illegal activity by publicly announcing it to millions of listeners.
6. Although we believe that there has been no transgression of the Code, the presenter will reaffirm on air his commitment to totally rejecting the use of weed or any other illicit drug and that he would never be party to delivering any such substance to anyone, as mentioned in jest during the earlier interview."

EVALUATION

[4] Clause 4(1) of the Broadcasting Code provides as follows:

Broadcasting service licensees must not broadcast material which, judged within context, sanctions, promotes or glamorises violence or *unlawful conduct* based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability. (emphasis added)

In respect of the meaning of the phrase "sanctions, promotes or glamorises violence" the *South African Concise Oxford Dictionary* defines "sanction" as meaning "official permission or approval for an action". The same dictionary defines "promote" as "further the progress of; support or encourage". Our Courts have held that to "promote" a principle means more than simply "to have regard to". Rather, it means "advance, develop, further, propagate, expedite and facilitate". *The South African Concise Oxford Dictionary* defines "glamorise" as meaning "make (something) seem glamorous or desirable, especially spuriously so". In the leading case on the meaning of "incitement", the Appellate Division¹ held as follows:

¹ *S v Nkosiyana & another* 1966 (4) SA 655 (A) at 658H–659B.

"[I]t seems to me proper to hold that, in criminal law, an inciter is one who reaches and seeks to influence the mind of another to the commission of a crime. The machinations of criminal ingenuity being legion, the approach to the other's mind may take various forms, such as suggestion, proposal, request, exhortation, gesture, argument, persuasion, inducement, goading, or the arousal of cupidity. The list is not exhaustive. The means employed are of secondary importance; the decisive question in each case is whether the accused reached and sought to influence the mind of the other person towards the commission of a crime."

The BCCSA has, in the past, held that "promotion" has the same meaning as "incitement".²

- [5] We do not believe that the presenter's words went that far. There was an atmosphere of jest present and the statement that bags would be delivered to the visitor when he leaves, placed the whole matter within the category of cynical jest.
- [6] In so far as children are concerned, we do not believe that the narrative would have been understood as promoting anything which is prohibited by law. Children older than 12 are likely to have understood the tongue-in-cheek style of the presenter. Children under 12 would, in general, not have taken an interest in the dialogue. It is, in any case unlikely that they would have understood the presenter to promote the use of dagga.

In the result no contravention of the Code was found and the complaint is not upheld.



JCW VAN ROOYEN SC
CHAIRPERSON

Commissioners Harper, Makeketa, Mmusinyane and Viljoen concurred with the judgment of the Chairperson.

² *National Commissioner, SAPS & Others v etv* 2010 JOL 25644(BCCSA).