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ADJUDICATION NO: 50/A/2010

ADJUDICATION: 2 September 2010

DATE OF BROADCAST: 24.07.2010. "Weekend Live" at 08h00

BROADCASTER: SABC 2

COMPLAINANT: NEIL KROESE

COMPLAINT

Alleged defamatory sweeping statements contained in email that was read during programme.

APPLICABLE RULE

The following clause of the BCCSA Code:

16.3(c) Licensees shall not broadcast advocacy of hatred that is based on race, ethnicity, gender, or religion, and that constitutes incitement to cause harm.

ADJUDICATION

[1] The BCCSA received a complaint regarding the contents of the programme *Weekend Live* that was broadcast on 24 July 2010 at 08h00 on SABC2. The presenter invited viewers to write in and express their views on the topic of copyright regarding the name *Bafana Bafana* in order to allow a variety of opinions to be heard.

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

"On Saturday Morning 24 July 2010 the presenters of Weekend Live on SABC 2 were reading e-mails relating to viewer comments dealing with the actions of the businessman

who own the name 'Bafana Bafana'. In one of the e-mails the following comments was made. 'This is typical of white people, they take what is not theirs..' I would strongly like to object to these kinds of comments being made on national television. I realize that it was the comment of viewer and not that of the broadcaster, yet one would expect the producers of the program to show some judgment and not allowing defamatory comments such as this to be aired on national television. Imagine what would have happened if a white person had made such sweeping statements about blacks? I think it is unfair to use the actions of a single white person as justification to make defamatory sweeping statements of all whites. I trust that you will take action against this. I expect SABC2 to make a formal apology for their lack in judgment."

[3] **The broadcaster's response included the following:**

1. We believe the complainant is overly sensitive and has taken a selected section of the e-mail that was read by the presenter out of context.
2. The e-mail read by the presenter started as follow: 'That's typical of white people who take what belongs to black people and try to make money out of it.' This is completely different from what the complainant claims was said: 'This is typical of white people, they take what is not theirs.'
3. As the presenter continues to read the email, the sender makes it quite clear what he meant by his opening statement.
4. The BCCSA has requested that we address the complaint under clause 16.3 of the BCCSA Code of Conduct which reads as follow:
*16.3 Licensees shall not broadcast
(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.*
We submit that the e-mail read by the presenter does not advocate any sort of discrimination or hatred towards any race group, nationality, religion or gender. We firmly believe that every person is entitled to have their view or opinion heard and protected under the freedom of expression clause in the Constitution of South Africa, as long as that expression does not advocate hatred or incite violence.
5. Members of the SABC news staff are highly trained professionals and we have measures in place which would not allow propaganda and hate speech to be broadcast.
We submit that there has been no transgression of the BCCSA Code."

[4] According to the SABC's web site, *Weekend Live* (broadcast on Saturdays and Sundays) is a magazine programme modelled on the successful formula of *Morning Live*. *Morning Live* keeps the nation informed on breaking news stories, national issues about ordinary South Africans, and also entertains the nation. This is an important mandate, particularly in a country as diverse as South Africa, with its problematic history and wide spectrum of public opinion.

[5] Since reporting on breaking news stories and national issues form part of the programme, it was not judged only on the basis of hate speech, but also in the context of comment.

The BCCSA's Code states that licensees shall be entitled to broadcast comment on and criticism of any actions or events of public importance as long as the comment is an honest expression of opinion and presented in such manner that it appears clearly to be comment, and made on facts truly stated or fairly indicated and referred to.

- [6] In my opinion the intention of the presenter was to inform the audience about how ordinary South Africans feel about an issue of public interest. The complainant argues that reading the email's contents stereotyped all white people. However, as the respondent indicated, the email only referred to specific people who abuse copyright regulations and not to all white people. In assessing the complaint and the context in which the email was read, I am convinced that the intention of the presenter was not to stereotype white people or to incite hatred against them, but simply to inform. In an open and democratic society, the test is tolerance and the principle of reasonableness is crucial, especially in a situation where a diverse range of opinions are aired, with which not all viewers may agree. It would be an artificial situation if attitudes that are an inevitable aspect of an unfortunate past are ignored. It should be noted that in a society where public viewpoints are often at odds, even racial prejudice will be allowed on air if it is judged to be in the public interest. The public has a right to be exposed to all kinds of views on current events and trends in society, regardless whether they may cause offense to some people. People need to be able to hear, form and express opinions and views freely on a wide range of matters.
- [7] The right to comment on controversial issues of public importance forms part of the media's guaranteed right to freedom of expression, the only qualification being that such comment shall be an honest expression of opinion and presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to. The complainant admits that it was clear to him that the comments were those of the author of the email and not those of the broadcaster. Reading the email on air does not mean that the SABC condones the view.
- [8] As far as the hate speech clause is concerned, the contents of the email do not fulfil the requirements to be classified as advocacy of hatred based on race. The term *advocacy* implies more than merely a statement, and includes an element of exhortation, pleading for, supporting or coercion. Likewise, no traces of incitement to cause racial hate against white people could be found. The word *incite* means to urge or stir up and it could not be found that the audience was encouraged or stirred up towards committing violence against white people or to cause them harm in any way.
- [9] The right to freedom of expression has been described as one of the essential foundations of a democratic society; one of the basic conditions for its progress and for the development of all its members. No doubt, certain sensitive members of the audience may find comments such as made in the email offensive, but the Constitutional Court has held that freedom of speech includes the right to air offensive material within reasonable limits. To find that broadcasting material amounts to hate speech constitutes a drastic limitation on freedom of expression and therefore it is not easily inferred. Only when the

further requirement is present, namely the incitement to cause harm, can it be said to limit the right to freedom of expression.

- [10] I understand and respect the sentiments of sensitive members of the audience and broadcasters should be constantly aware that in a growing democracy and multicultural society like South Africa, special care should be taken not to ignore racial sensitivities. Nonetheless, judged within the context of the broadcast, it is concluded that reading the email on air has not exceeded the limits of the broadcaster's freedom of expression.

Since no contraventions of the Code could be found, the complaint is not upheld.

**DR. LINDA VENTER
BCCSA COMMISSIONER**