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**CASE NUMBER: 07/2016**

**DATE OF HEARING: 09 MARCH 2016**  
**JUDGMENT RELEASE DATE: 07 JUNE 2016**

**HASANE**

**COMPLAINANT**

**Vs**

**TALK RADIO 702**

**RESPONDENT**

**TRIBUNAL: JUDGE R MOKGOATLHENG (CHAIRPERSON)**  
**PROF HENNING VILJOEN (DEPUTY CHAIRPERSON)**  
**PROF VICTORIA BRONSTEIN**

**FOR THE COMPLAINANT: The complainant was present.**

**FOR THE RESPONDENT: Ms Khahliso Mochaba, Group Human Capital and Regulatory Affairs Executive, Primedia Broadcasting, accompanied by Mr Tebogo Mokoena, Regulatory Affairs Officer.**

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*Complaint that comment by Redi Tlhabi in Talk Show implied that the dumber people in leadership in government were, the better - following the public statement by president Zuma that people should not pay attention to people who talked too much on television because they are educated black people who think they are clever - comment offensive to complainant who is a graduate in the employ of government - presenter's response to complaint appears to be condescending and degrading to complainant - Tribunal finding that just as complainant has right to freedom of expression, so has the presenter - also finding that dignity of complainant has not been impaired - complaint not upheld - Hasane vs Talk Radio 702, Case: 07/2016(BCCSA)*

## SUMMARY

Complaint that comment by Redi Thabi in Talk Show implied that the dumber people in leadership in government were, the better. This comment followed upon a public statement by president Zuma, after his dismissal of the Minister of Finance, that people should not pay attention to people who talked too much on television because they are educated black people who think they are clever. This comment was offensive to the complainant who is a university graduate in the employ of government. The presenter's response to the complaint appeared to be condescending and degrading to the dignity of the complainant. The Tribunal found that just as the complainant has a right to freedom of expression, so has the presenter the same right in an open and democratic society. The Tribunal also found that the dignity of the complainant might have been subjectively impaired but judged objectively, it has not been impaired. No contravention of the Broadcasting Code could be found and the complaint was not upheld.

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## JUDGMENT

### R MOKGOATLHENG

[1] A complaint was received regarding the Redi Thabi shows of the 26<sup>th</sup> January and 27<sup>th</sup> January 2016.

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

“On the 26th January 2016, Time: 09:00 - 09:30 “Open Line” segment

On Radio 702 a caller asked the host Redi "Why does the government not consult intellectuals like Thabo Mbeki ?" ( paraphrased)

Redi Replies:

"We have a government that is anti-intellectuals. It's the dumber the better. Intellectuals are suppressed... they are outside gov protesting" ( another paraphrase )

With her comments she suggests there is an absence of intellectuals in the leadership of the country and that "the dumber the better" is the requirement to be in that leadership.

**On the 27th January 2016 on the 09:00 - 09:30am Open Line segment**

I called in to ask for an explanation

*“Your comments were very offensive to me as young person who just recently graduated and came to work for government,I don’t think the government I work for is anti-intellectual. There are many people who are brilliant at what they do, who were appointed by the president. I don’t know if you think the president is dumb or if the ministers he appoints are dumb, but I thought that was out of line. **Your dumber the better commend offended me and I needed to call and get an explanation”** ( paraphrased )*

Redi explained and this was part of her explanation

*“I feel very sorry for you if your only tool to discernment and interpretation is what people literally mean. I can sit here and say: don’t ask questions or ignore people who ask questions. The meaning is the same. If you are waiting for the president to issue an instruction to say that people must not ask questions, then good luck to you...*

*..You talk about discernment. Discernment means you look at tonality. You look at subtext and if I'm discouraging you from listening to people who are asking questions then I'm saying that I'm the kind of person who doesn't welcome that kind of thing, and that's my interpretation. And I don't have to (explain myself ) because I've made a comment. And you wanted me to give an explanation because you needed an explanation. **I speak because I take it that we are all equals.** In my mind, how could I anticipate that someone would misunderstand it and want personalities. I didn't see the need to elaborate, and say so and so is intellectual, and so and so is dumb, so I didn't think I needed to explain something that is so obvious. **But in future I will take it that there are people like you that need things to be explained to you. (paraphrase )***

Tlhabi clarified her comments and substantiated her belief that President Zuma does not have a high regard for intellectual vigour. She referred to his comments in December last year, when he told an audience in Mpumalanga not to "pay attention to people who talk too much on television. The educated people who think they are clever" after the backlash of his firing of Nhlanhla Nene as Finance Minister.

*"That, to me, coming from the leader of government does not tell me that he has a high regard for intellectual vigour."*

Explanation is fine but is highly problematic because its only given when asked - the previous comment made on the 26th Jan was just said without any meaning and people could interpret it in anyway.

Also this comment fell short on addressing what Redi mean with "**The dumber the better**" comment as requirement to be in leadership.

My Complaints.

**1st One: The response of "The dumber the better" comment to a caller on the 26th of Jan 2016**

**2nd One: Being ridiculed and belittled with a condescending policing agains seeking for clarity tone - Having a low self-esteem for taking offence on her comments.**

The host on the caller on the 26th did imply that anyone working for government at leadership level is dumb. Her "the dumber the better" comment suggested so. She did mean that the President is Zuma is dumb and just fell short of saying it.

On the 27th when Redi was very condescending and belittling towards me in her response on the call I made to 702. She made it wrong for me to call and ask for explanation because as she said " she does not have to explain herself" and that she thought I am at her level and will understand what she meant to say.

This is problematic - Listeners of radio stations come from all walks of life, they are not on Redi's level and therefore can not always know what she means to say.

She implied that all her listeners were intellectually on par with her and understood everything she said hence the need not to explain statements which were open to a different kind of interpretation. She generalised and all she had to say was that "I hear and understand your viewpoint but that is not what I meant and I stand by it."

Redi then on the same call suggested that I suffer from Low self esteem for taking offence on what she said and that I needed psychological help. She isn't a psychology but a Radio personality; any diagnosis done on her on my wellbeing over the Radio without me asking for it is not done in good faith but insult.

My Rights as a listener was abused as when I asked for an explanation to an issue I was belittled about my self esteem, my inability to comprehend and not be offended by Redi's comment as expected from people on her level.

This is the essence of what is wrong in South Africa. Our commentators get away with many things in the name of "Criticising President Zuma". They make a living by criticising people but dont want to be criticised.

SIDE-note:

The definition of what an intellectual is by the black middle class is problematic and borrowed. It assumes, if one has never been to school or some university they are not intellects and are dumb. Its not only problematic but borrowed because it serves the people who gave it this meaning credence - the people who viewed blacks as dumb savages that needed to be saved from themselves. It was used to suppress us now we use it against each other. Why is it that we still use this monolithic blindsided way of defining what an intellect is?

Let me stop there least I be accused of pulling the "race card" and that is just an opinion which.

The government which I work for has intellects, from the Judges led by the Chief Justice, the Ministers and their deputies, the Heads of our Chapter 9 Institutions like Thuli Madonsela and heads of our state entities like Brian Molifi appointed by the President are intellects in their own rights - to a Mayor in some small municipality in Kuvukiland. You can't say we have an anti-intellectual government and that the "dumber" the better is requirement for leadership and go on to praise and single out some individuals in government who are appointed by the same person you say is anti-them and dumb.

The Society that we live in is classist, racist, sexist, ableist and bigoted in many ways. We enable this everytime you hear a comment no matter how small and not challenge it. I am not absolving myself from this bigotry; I am guilty.

Redi's comment were not only offensive but they were ableist - why is it that a person who need an explanation from her is seen as "lower" than her level or needs some special attention as she said on her comment of " I will keep in mind we have people like you"?.

It can't be ok for Radio host to say "THE DUMBER THE BETTER" about the leadership of our country like it was not ok for that eNCA Anchor to mock the Minister's pronunciation of an english word. I would imagine that if Redi was a white lady, she was not going to get away with saying that the leadership of our country is dumb."

[3] **The Respondent's response was as follows:**

**"Esethu Hasane/702 – Dignity**

**1. Background**

1.1 702 has received a complaint from one Mr. Esethu Hasane regarding the 702 broadcast on 27 January 2016 on the Redi Thlabi Show during the open line segment of the show.

1.2 The complainant states *inter alia* in his complaint that:

*"On Radio 702 a caller asked the host Redi "Why does the government not consult intellectuals like Thabo Mbeki?" (paraphrased) Redi Replies:*

*We have a government that is anti-intellectuals. It's the dumber the better. Intellectuals are suppressed... they are outside gov [sic] protesting" (another paraphrase)*

*With her comments she suggests there is an absence of intellectuals in the leadership of the country and that "the dumber the better" is the requirement to be in that leadership...*

*... I called in to ask for an explanation*

*"Your comments were very offensive to me as young person who just recently graduated and came to work for government, I don't think the government I work for is anti-intellectual. There are many people who are brilliant at what they do, who were appointed by the president. I don't know if you think the president is dumb or if the ministers he appoints are dumb, but I thought that was out of line. Your dumber the better comment offended me and I needed to call and get an explanation" (paraphrased)*

*Redi explained and this was part of her explanation*

*"I feel very sorry for you if your only tool to discernment and interpretation is what people literally mean. I can sit here and say: don't ask questions or ignore people who ask questions. The meaning is the same. If you are waiting for the president to issue an instruction to say that people must not ask questions, then good luck to you..."*

*..You talk about discernment. Discernment means you look at tonality. You look at subtext and if I'm discouraging you from listening to people who are asking questions then I'm saying that I'm the kind of person who doesn't welcome that kind of thing, and that's my interpretation. And I don't have to (explain myself) because I've made a comment. And you wanted me to give an explanation because you needed an explanation. I speak because I take it that we are all equals. In my mind, how could I anticipate that someone would misunderstand it and want personalities. I didn't see the need to elaborate, and say so and so is intellectual, and so and so is dumb, so I didn't think I needed to explain something that is so obvious. But in future I will take it that there are people like you that need things to be explained to you. (paraphrase)...*

*...My Complaints.*

*1st One: The response of "The dumber the better" comment to a caller on the 26th of Jan 2016*

*2nd One: Being ridiculed and belittled with a condescending policing against [sic] seeking for clarity tone - Having a low self-esteem for taking offence on her comments."*

- 1.3 The Registrar of the BCCSA has requested that the broadcaster to respond in terms of clause 15(1) of the BCCSA Free to Air Code of Conduct for Broadcasting Service Licensees 2009 ("the Code").

## **2. Broadcaster's Response**

- 2.1 As has been held by the Tribunal before, context is paramount when judging speech. It is for this reason that we are of the firm view that it is important to set out the context in which the statement took place. On the 26<sup>th</sup> January 2016, a listener called into the open line segment of the show and asked what happened to the country's intellectuals who can help government come up with solutions. In response to the caller the presenter said the following:

*"...They are intimidated, they told them they are clever blacks and because somehow clever people are dangerous to leadership, the dumber the better... I think they are there, they writing, they speaking, they joining protests and all of that and of course we have an anti-intellectual leadership I suspect..."*

2.2 The following day, on the 27<sup>th</sup> January 2016, the complainant called into the Redi Thlabi Show during the open line segment and raised his disagreement with the presenter's previous day's response to the caller. The complainant asked who the presenter was referring to with "*the dumber the better*" statement. The complainant went further to state that there are a number of intellectuals in the public service and that the presenter was unfair in her response. The presenter then responded to the complainant by giving context to her statement. *Inter alia* she states that there is a sense of hostility towards intellectualism and dumbing down of debate in government leadership. The presenter explained that her statement was not attached to any personality in government but it is something she had observed from the different statements made by the president. It appears that the complainant took offence to "*the dumber the better*" statement and felt that this statement meant that every civil servant is dumb.

2.3 702's approach to talk radio is to have talk show hosts with views and opinions on a variety of issues. The hosts are encouraged to share their views and opinions with listeners and callers while engaging with them. While talk show hosts have strong views and opinions, 702's commitment has always been to open the minds of its listeners through reflecting a broad range of views, including those of callers. The presenter in this instance is no exception. The presenter adopts a robust style of engagement and discussion, particularly during open line segments. This approach allows her to share her views and opinions on a range of topics in the news. However she also offers listeners a platform on which they can express their views and opinions. Though she may disagree with a listener's view, she allows the listener time to articulate and outline his/her view on an issue. She frequently engages with the listener, debating the merits of such a view or opinion. Her intention and style of engaging a listener is to interrogate the caller's idea or opinion.

2.4 **Clause 15 (1) of the Code**

2.4.1 Clause 15(1) of the Code provides:

*"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."*

2.4.2 702 is of the firm view that context is of paramount importance when judging speech, which is why we gave context to the matter at hand in the preceding paragraphs.

2.4.3 The test as to what constitutes impairment of dignity was clearly set out by the Appellate Division in *Delange v Costa*<sup>1</sup>. The court laid out the test as made up of two elements firstly the plaintiff's self-esteem must actually be impaired (the subjective test); and secondly whether a person of ordinary sensibilities would have regarded the conduct as offensive (the objective test).

2.4.4 The abovementioned two-pronged test was subsequently affirmed by the Constitutional Court in *Khumalo v Holomisa*<sup>2</sup> where the court held that:

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<sup>1</sup> 1989 (2) SA 857 A

<sup>2</sup> 2002 (5) SA 401 (CC) at para 27

*“The value of human dignity in our Constitution is not only concerned with an individual’s sense of self-worth, but constitutes an affirmation of the worth of human beings shared by all people as well as the individual reputation of each person built on his or her own individual achievements. The value of human dignity in our Constitution therefore values both the personal sense of self-worth as well as the public’s estimation of the worth or value of an individual [Underlining own emphasis]”.*

- 2.4.5 In deciding whether or not the statement in question has in fact impaired the complainant’s dignity, we submit that the law requires the Tribunal to not only look at it subjectively from the complainant’s perspective but to also look at it objectively. Indeed this is clearly set out by the Supreme Court of Appeal in *Delange v Costa*<sup>3</sup> where it states that:

*“In determining whether or not the act complained of is wrongful the Court applies the criterion of reasonableness – the “algemene redelikhheidsmaatstaf” (*Marais v Richard en ‘n Ander* 1981 (1) SA 1157 (A) at 1168C). This is an objective test. It requires the conduct complained of to be tested against the prevailing norms of society (ie the current values and thinking of the community) in order to determine whether such conduct can be classified as wrongful. To address the words to another which might wound his self-esteem but which are not, objectively determined, insulting (and therefore wrongful) cannot give rise to an action for injuria. (*Walker v Van Wezel (supra)* at 68.)”*<sup>4</sup>[Underlining own emphasis]

- 2.4.6 The objective standard requires the application of the “reasonable person” test which is based on an ordinary person with ordinary sensitivities. The law considers a variety of factors in determining whether a person has acted as the hypothetical reasonable person would have acted in a similar situation. These factors include the knowledge, experience, and the circumstances surrounding the person’s actions. Conduct must be judged in light of a person’s actual knowledge and observations, because the reasonable person always takes this into account. The Supreme Court of Appeals has had occasion in a number of cases before it to deal with the test. When dealing with the test of a reasonable man, the SCA in *Mohamed Adnaan Batchelor vs Shaik Hoosain Gabiet*<sup>5</sup> when dealing with the issue of a reasonable lessor held that:

*“the test of ‘reasonably requires’ is a relative one. It is premised on the requirements of a reasonable man in the lessor’s position and there will very seldom be an exact similarity of requirements between different lessors. It is, therefore, impossible to postulate an a priori or immutable test of what ‘reasonably requires’ means. The standard will differ from lessor to lessor, from locality to locality, and from time to time”* [underlining own emphasis].

- 2.4.7 It is our respectful submission that while the view on whether or not the statement in question impaired the dignity of the complainant will differ from listener to listener - the case at hand requires the reaction of a

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<sup>3</sup> 1989 (2) SA 857 A

<sup>4</sup> Mervyn Dendy and University of the Witwatersrand, Neil Garrod and Andrew St Quintin Skeen Supreme Court of Appeal, Case number: 597/05(Reportable)

<sup>5</sup> Case number 125/2000 [reportable] at para 13

reasonable 702 listener. We have in a number of cases before the Tribunal described a 702 listener – a 702 listener is driven by purpose, open minded, worldly, in touch with what is happening around him/her, open to new thinking, looks at all sides of a story and therefore is not easily influenced. We therefore submit that a reasonable 702 listener, would have looked at the presenter’s statement in context and in light of that context would have not found the statement offensive.

2.4.8 It is 702’s respectful submission that while the complainant’s self-esteem may have been subjectively impaired, looking at the complaint objectively and taking into account the context in which the statement was made, a reasonable 702 listener would have not considered the statement by the presenter as having impaired on the dignity of the complainant. In this regard, it is our respectful submission that there has been no contravention of clause 15(1) of the Code.”

## EVALUATION

[4] The complaint traverses the following clauses:

***Clause 15(1) of the Code*** provides:

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.

***Clause 12*** provides:

- (1) Broadcasting service licensees are entitled to broadcast comment on and criticism of any actions or events of public importance.
- (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.
- (3) Where a person has stated that he or she is not available for comment or such a person could not reasonably be reached, it must be stated in the programme.

[5] Listening to Mr Hasane trying to engage Redi Tlhabi about her comments, it is understandable that he regarded her response as offensive, in that she ridiculed him in a condescending and belittling tone, implying that he was not at the same intellectual level as she is. By stating that Mr Hasane has low self-esteem, and that he needed psychological help, Redi Tlhabi’s comments came across as offensive and objectionable. Moreover, it is not true that everyone who works for the government is ‘dumb’ and that such persons are not intellectual.

[6] It may well be the case that Redi Tlhabi’s comments were objectionable from the perspective of the Complainant, and that her conduct was offensive. The fact of the matter is that Redi Tlhabi and the Complainant engaged in a robust discussion in which each party advanced argument from its perspective for about eight minutes. It

may be so that Redi Tlhabi scoffed at and irreverently ridiculed the Complainant and impugned his views and comments, but only if his interpretation of Redi Tlhabi's comments is predicated on the literal meaning of the words she used, rather than interpreting them as hyperbole.

- [7] Redi Tlhabi may well have impugned the Complainant's understanding of her use of language and tone, and she may also have condescendingly opined that she thought the Complainant was not her intellectual equal, and may have surmised that his intellectual grasp of the issues under discussion did not coincide with her intellectual understanding of same. Redi Tlhabi's comments may have been offensive and elitist, but the fact of the matter is that *Section 16(1)(b) of the Constitution Republic of South Africa Act 108 of 1996* guarantees her freedom of expression to receive or impart information or ideas.
- [8] Apparently, by way of example, Redi Tlhabi referred to a statement made by President Zuma to an audience in Mpumalanga in the wake of the furore caused by his firing of Minister of Finance, Nhlanhla Nene, that "*the people should not pay attention to people who talk too much on television because educated black people think they are clever.*" In Redi Tlhabi's opinion, this utterance by President Zuma, who is the head of government, indicates that the President does not have a high regard for the intellectual rigour of black people. Redi's opinion was that we have a government that is anti-intellectual and subscribes to the dictum, "the dumber the better", in that intellectuals are suppressed, and are, as a consequence, outside of government.
- [9] Redi's comments also suggest that there is an absence of intellectuals in the leadership of the country, that "the dumber the better" is the requirement to be in that leadership group. Mr Hasane took offence and umbrage at the comment because, as a young graduate employed in government, it is not his experience that the government is anti-intellectual.
- [10] Mr Hasane argues that there are many people who are brilliant at what they do, and who are appointed by the President. Consequently, Redi Tlhabi's "dumber the better"

comment offended him to the extent that he felt compelled to get an explanation from her concerning this notion.

- [11] During the hearing, Mr Hasane expanded his argument that Redi Tlhabi's comments implied that everyone employed in government inhabited an anti-intellectual environment, because government was hostile to intellectualism. Mr Hasane argued that Redi Tlhabi's implication that there are no intellectuals employed in government is a lie.
- [12] The broadcaster's response that Redi Tlhabi's comment, the "dumber the better", was not directed at any particular person in government, but was instead a general statement, is disingenuous. This is so because Redi Tlhabi made reference to the statement by President Zuma, and opined that he did not have a high regard for intellectual rigour by virtue of his comment that people should not pay attention to people who talk too much on television, because these are educated black people who think they are clever.
- [13] Redi Tlhabi presents what is perhaps the country's most popular Talk Show on current affairs, regarding controversial topical issues of public importance. Redi Tlhabi is a Talk Show hostess who invites comment, opinion, discussion and debate on any issue of public interest or public importance. Listeners are invited to express wide-ranging comments or views on topics of national and public importance. Redi Tlhabi participates in the discussions and robustly engages listeners' opinions and the views expressed, and presents provocative counter-argument, comment, opinion and debate, and she also interrogates the logic, practicability and sustainability of ideas expressed, as well as comments or views put forward by listeners.
- [14] Redi Tlhabi's talk show is a programme well known for satire, parody and sarcasm, and she employs figurative language and displays intellectual rigour. The show is targeted at a well-educated, sophisticated, cosmopolitan, well-informed listenership, and consequently the listeners know that it broadcasts controversial issues, and that it employs robust, irreverent, offensive and satirical language.

[15] Indeed, Redi Tlhabi seems not to suffer fools, and her talk show is aimed at sophisticated, intelligent members of the public who are likely to know, understand, and appreciate that her comments on public affairs, or current matters of public interest, or matters of importance relating to human life and experience, are often provocative, argumentative and sarcastic.

[16] Inasmuch as Mr Hasane has a constitutional right to freedom of expression, so too does Redi Tlhabi enjoy the same right. The right to freedom of expression is not dependent on the dissemination of acceptable or rational ideas only; indeed, it extends to opinion or views that might be anathema to those who occupy influential positions in society or in institutions.

[17] See *Financial Mail (Pty) Ltd and Others v Sage Holdings Ltd and Another 1993 (2) SA 451 (A)* in which Corbett CJ said, in delivering the majority judgment (*at 464C-D*):

“(1) There is a wide difference between what is interesting to the public and what it is in the public interest to make known... (2) The media have a private interest of their own in publishing what appeals to the public and may increase their circulation or the numbers of their viewer or listeners; and they are peculiarly vulnerable to the error of confusing the public interest with their own interest...”

Quoted with approval by Hoexter JA in *Neethling v Du Preez; Neethling v The Weekly Mail 1994 (1) SA 708 (A) at 779* and Hefer JA in *National Media Ltd v Bogoshi & Others 1998 (4) SA 1196(SCA) at 1212* where reference is made to *Asser, Handleiding tot de Beoefening van het Nederlands Burgerlijk Recht (9<sup>th</sup> Ed vol 111 at 224 para 238*:

... “In practice the public interest is especially employed in matters concerning views expressed via die printed media and television: public interest is, within this context, based on freedom of expression, as guaranteed by the Constitution and by treaties, to expose alleged abuse (and or evil in society). In deciding whether the defence of public interest was lawful usually depends on a balancing of interest – the outcome of which is dependent on the facts of each case. (translated from the Dutch)

[18] The *Constitution of the Republic of South Africa in terms of section 39(2)* enjoins our courts and tribunals to interpret and develop and apply the common law in accordance with the purport, object and spirit of the Constitution of the Republic of South Africa.

**Section 16(1) of the Constitution:**

This clause of the Bill of rights guarantees freedom of expression. It provides that:

“**16(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.”*

- [19] **Section 16(1)(a) of the Constitution** guarantees, *inter alia*, freedom of the press and other media. The Constitutional Court has specifically stated that the broadcast media is included in this guarantee, and that “*The print broadcast and electronic media have a particular role in the protection of freedom of expression in our society...The media thus rely on freedom of expression and must foster it. In this sense they are both bearers of rights and of constitutional obligations in relation to freedom of expression...The Constitution thus accepts and protects the media in the performance of the obligations to the broader society, principally through the provisions of section 16*” (*Khumalo and Others v Holomisa*) 2002 (5) SA 401 (CC) at paragraph 22 and 24).

This principle has been recognised by the Constitutional Court, which has held that: “*The right to freedom of expression is integral to democracy, to human development and to human life itself. It must be all the more zealously guarded because the infringement of this right was used as an instrument in an effort to achieve the degree of thought control conducive to preserve apartheid and to impose a value system fashioned by a minority on all South Africans*” (*Phillips and Another v The Director of Public Prosecutions and Others* 2003 (4) BCLR 357 (CC) at paragraph 23).

- [20] The right to freedom of expression encapsulates and guarantees even unpopular and controversial views and opinions which might incense the values of a section of the population which subscribes to different views to those espoused.

The Constitutional Court has held with regard to unpopular speech that: “*The corollary of the freedom of expression and its related rights is tolerance by society of*

*different views. Tolerance of course, does not require approbation of a particular view. In essence, it requires the acceptance of the public airing of disagreements and the refusal to silence unpopular views ... (South African National Defence Union v Minister of Defence and Another 1999 (6) BCLR 615 (CC) at paragraphs 7 and 8).*

[21] A society which truly respects freedom of expression must, of necessity, afford protection to the views which may be regarded as “unpopular” and “controversial”. The European Court of Human Rights has held that freedom of expression is: “... applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population... Such are the demands of the pluralism, tolerance and broadmindedness without which there is no democracy” – *Handyside v The United Kingdom 1976 ECHR at paragraph 49).*

[22] The Republic of South Africa is not only inhabited by conservative, government-supporting or compliant people; on the contrary, this country is inhabited by an amalgam of citizens: together they constitute a diversity of cultures and religious beliefs, of various socio-political, economic and educational persuasions, which all enjoy equal protection under the *Constitution of the Republic of South Africa.*

[23] It is held that the programme did not contravene Clauses 12 and 15 of the BCCSA’s Code of Conduct. **In the result the complaint is not upheld.**



**JUSTICE RATHA MOKGOATLHENG  
CHAIRPERSON**

*Commissioners Bronstein and Viljoen concurred with the judgment of the Chairperson.*