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CASE NUMBER: 17/2016

DATE OF HEARING: OCTOBER 2016
JUDGMENT RELEASE DATE: 23 NOVEMBER 2016

SHIVAMBU

COMPLAINANT

vs

SABC CHANNEL 404

RESPONDENT

TRIBUNAL: PROF HP VILJOEN (ACTING CHAIRPERSON)
PROF V BRONSTEIN
DR T MMUSINYANE

THE COMPLAINANTS: Mr Shivambu in person, accompanied by Mr Khosa Ndhambi, Researcher

FOR THE RESPONDENT: Mr Nyiko Shibambo: Acting Manager: Broadcasting Compliance, Regulatory Affairs SABC, accompanied by Mr Kagiso Moeleso

Complaint that in a news/comment programme the Broadcaster failed to invite someone with knowledge of the Vatsonga to challenge the statements by the Deputy Minister of Co-operative Government and Traditional Affairs on this topic - although titled a news programme, listeners and viewers were invited to phone in and comment on the subject of the programme - Tribunal decided previously that only a person whose views are challenged should be allowed to appear on programme - Complainant tried to phone in but failed - principle remains that the public was invited to express their views on air, thereby obtaining balance - no contravention of the Code found - Shivambu vs SABC Channel 404, Case No:17/2016(BCCSA)

SUMMARY

Complaint that in a news/comment programme the Broadcaster failed to invite someone with knowledge of the Vatsonga to challenge the statements by the Deputy Minister of Co-operative Government and Traditional Affairs on this topic. This programme was

titled a news programme but listeners and viewers were invited to phone in and comment on the subject of the programme. The Tribunal decided in case no. 24/2014, *Midgley v 567 Cape Talk*, that only a person whose views are challenged should be allowed to appear on a programme of this nature. The Complainant testified that he tried to phone in to the programme but failed. This is unfortunate, but the principle remains that the public was invited to express their views on air, thereby obtaining balance in the programme. No contravention of the Code was found.

JUDGMENT

HP VILJOEN

- [1] This matter comes before this Tribunal as an appeal by the Complainant against the decision by the Registrar of the BCCSA in which she declined to accept the complaint because, according to her, the Complainant did not make out a *prima facie* case of contravention of the Code of Conduct and because a Tribunal of the BCCSA would probably not find a contravention of the Code in this case.
- [2] The complaint concerns the broadcast of a programme called "Question Time" that was broadcast on 26 September 2016. At the start of the programme, a banner on the screen shows "SABC News". This programme differs from an ordinary news bulletin in the sense that a matter of public interest is being discussed in the studio and the viewers are invited to phone in or send sms's and in this way to comment on what is being said in the programme. The topic for discussion was the role of traditional leaders in a democracy, and the Deputy Minister of Co-operative Government and Traditional Affairs, Mr Bapela, was invited to explain the Government's stance on traditional leaders. This broadcast happened just two days after the country celebrated Heritage Day. The month of September was declared heritage month by government and it was in this context that the role of traditional leaders was discussed.
- [3] The Complainant lodged a complaint because he was upset that the Respondent broadcaster did not invite someone to challenge the views of the Deputy Minister on the kingdom of the Vatsonga. The reason, according to the Complainant, is that the Broadcaster was instrumental in broadcasting a falsehood and the "wrong narrative" about the king of the Vatsonga without inviting someone to the studio to counteract the government's stance on this issue.

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

“My complain is in regard to the program broadcasted by sabc news on the 26 of September at 17h30. The name of the program is Question Time. SABC afforded Deputy Minister of Cogta an opportunity to pronounce on Tsonga kingship and make wild claims that Vatsonga kingship is in Mozambique. SABC did not afford an opposite view from Vatsonga to question the authenticity of Bapela statement in regard to Vatsonga. This has an opportunity to further fuel a claim that Vatsonga are not South African enough and such are icammigrants whose origins are in Mozambique.Its worrying when a public broadcaster become part in falsehood and wrong narrative and apartheid driven history towards Vatsonga.

Vatsonga had Kingship that were destroyed by apartheid, Hosi(King Njakanjaka) Mkhari was one of the respected Tsonga King in the territory of South Africa. The Vanwanati Dynasty had its roots in Mhinga kingdom and that of Vankuna. false Historic narrative by government officials must be challenged. SABC must also be fair in bringing in, people that will provide clear Historic discourse on Tsonga leadership.”

[5] **The Broadcaster’s responded as follows:**

BCCSA COMPLAINT: NTSAKO SHIVAMBU - CHANNEL 404 - QUESTION TIME - 26.09.2016 - 17:30

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

1. The programme was discussing the role of traditional leadership in a democracy, as part of celebrating Heritage Month. The guest in question was the Deputy Minister of Cooperative Governance and Traditional Affairs, Obed Mapela.
2. Whatever the deputy minister said in the programme was being presented to our audience from his position of authority as a representative of government.
3. The Deputy Minister indicated that Vatsonga didn’t have a King in South Africa but in Mozambique.
4. A forum had been provided for viewers to air their views on the topic of the day.
5. We also deny that we are part of any falsehoods as suggested by the complainant.
6. The complainant describes himself as a researcher and a historian; hence we believe that he would not find it difficult to directly challenge the deputy minister through other platforms other than the BCCSA.

We submit that there was no contravention of the Code.

EVALUATION

- [6] At the hearing we looked at the broadcast and then listened to argument by the Complainant and the person who accompanied him to the hearing. Then we heard argument by the representative of the Broadcaster. The parties differed from each other until the end of the hearing and could not be reconciled in their views on the matter. The question this Tribunal has to answer is whether the Broadcaster contravened the

Broadcasting Code by not ensuring that someone was in the studio to put an opposing point of view from the Deputy Minister's.

[7] The complaint is that the Government's view on the question of the kingship of the Vatsonga, namely that the kingship is based in Mozambique and not in South Africa, is one-sided. According to the Complainant the kingship of the Vatsonga was destroyed by the apartheid system in South Africa. It is not the task of this Tribunal to decide issues such as this. As mentioned above, our task is to determine whether it was necessary to invite someone to present an opposing point of view during the broadcast.

[8] The nature of the programme, as explained in paragraph [2] above, is that of a news programme where a matter of public interest is being discussed. We were informed that in the past more than one person were invited on this programme on occasion. In this instance the Broadcaster, in exercising its editorial discretion, decided that it would invite only the Deputy Minister of the Department concerned to give the Government's view on the subject of traditional leadership. This was a general discussion, but inevitably the subject turned to specific examples. One such example was the coronation of the king of the Bavenda. According to the Deputy Minister two royal families were in dispute about that kingship. Despite the fact that a court of law has not given judgment on this issue so far, the Government has decided on a king for the Bavenda. Neither of the feuding parties was invited to debate the issue on "Question Time".

[9] Clause 13 (1) of the Free to Air Code states:

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.

In this case the controversial issue was raised by a guest in a way that the broadcaster could not have anticipated. The was called a news programme but the viewers and listeners were invited to phone-in to the programme. If the circumstances had been

different, the responsibilities of the Broadcaster with respect to balance would have been quite different.

- [10] It is clear that when the director of this programme decided to invite the Deputy Minister to give the Government's view on traditional leadership, it was not possible to anticipate which contentious matters would be discussed and who all the parties would be who had definite views on the subject. Likewise it could not be anticipated that the kingship of the Vatsonga would come up for discussion and the question who would have strong views on that matter would arise.
- [11] Despite the fact that this was called a news programme, the viewers were invited to call in or send sms's to the channel as stated above. In fact, a few people called in, *inter alia* one from Soshanguve and one from Polokwane. Some expressed criticism of the Deputy Minister's viewpoints. There was thus some balance obtained. The Complainant, like any other viewer also had the opportunity to call the broadcasting station and give his views on the matter. At the hearing he testified that he tried to phone in to the programme but was not successful. He also blamed the short duration of the programme for not allowing more viewers to phone in. We understand this situation but the principle remains that viewers could phone in and give their views, also criticising the speaker, and thus bring balance to the discussion.
- [12] In case no. 24/2014 *Midgley v 567 Cape Talk*, this Tribunal decided that clause 13(2) of the Free-to-Air Code (which is the equivalent of clause 28.3.2 of the Code for Subscription Broadcasting Service, the Code and clause applicable to this complaint) confers a right to reply only to a person whose views have been criticised on a matter of public importance. As far as we could ascertain, the views of the Complainant were not criticised in the programme concerned and he was also not denied the right to give his view on the matter. We can therefore not find that the Broadcaster contravened clause 28.3.2 or any other clause of the Code.
- [13] A side issue concerns a written statement by the Complainant that he challenged an article that appeared in "African Times" on this matter and that the publisher apologised and offered him an opportunity to respond to the "lies". This was denied by the Broadcaster and the correctness of the denial was confirmed by the editor of "Africa

Times". As stated above, this is a side issue and has nothing to do with the question whether the Broadcaster contravened the Code or not. We therefore do not express an opinion on that issue.

The finding is that the broadcast complained about was not in contravention of the Code of Conduct and the complaint is, accordingly, not upheld.



**HP VILJOEN
ACTING CHAIRPERSON**

Commissioners Bronstein and Mmusinyane concurred with the judgment of the Acting Chairperson.