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**CASE NUMBER: 05/2017**

**DATE OF HEARING: 23 FEBRUARY 2017**  
**JUDGMENT RELEASE DATE: 23 MARCH 2017**

**HART**

**COMPLAINANT**

**VS**

**SABC – LIGWALAGWALA FM**

**RESPONDENT**

**TRIBUNAL: PROF HP VILJOEN (CHAIRPERSON)**  
**PROF SUNETTE LÖTTER (DEPUTY CHAIRPERSON)**  
**MR BRIAN MAKEKETA (DEPUTY CHAIRPERSON)**

**THE COMPLAINANT:** The Complainant was invited but was unable to attend. Neither could his attorneys, Hough & Bremner, attend.

**RESPONDENT:** Mr Nyiko Shibambo, Manager: Broadcasting Compliance, Regulatory Affairs SABC accompanied by Compliance Officer Ms Refilwe Timana and Kagiso Moeleso: Intern

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*Complaint that broadcast of news item defamed Complainant without giving him opportunity to put his side of case – Tribunal finding that clause 11(1) relating to broadcasting of news truthfully, accurately and fairly, was violated – Broadcaster ordered to allow Complainant airtime to put his side of the case, should he so wish – Hart v Ligwalagwala Case No:05//2017(BCCSA)*

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## **SUMMARY**

**This case deals with a complaint that the broadcast of news item defamed the Complainant without giving him the opportunity to put his side of case. The Tribunal**

**found that clause 11(1) of the Broadcasting Code relating to the broadcasting of news truthfully, accurately and fairly was violated, despite the fact that the Broadcaster considered itself bound by a policy of the Department of Education requiring the media to enquire from the spokesperson of the Department and not from officials. The Broadcaster was ordered to allow the Complainant airtime to put his side of the case, should he so wish.**

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## **JUDGMENT**

**HP VILJOEN**

[1] A complaint was received by the Registrar of the BCCSA regarding the broadcast of a news clip on 28 November 2016 at about 12:00. The broadcast was about certain financial irregularities committed by the Complainant who at that time was the principal of the Kaapmuiden Primary School. The Complainant alleged that the broadcast was unfounded, untrue, that his rights were prejudiced and that he was defamed.

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

"I refer to my email below sent to yourself and Ligwalagwala radio station.

I hereby formally lodge a complaint with the Broadcasting Complaints Commission based on the following:

1. On 28 November 2016 a member of the SGB of Kaapmuiden Primary School was interviewed on Ligwalagwala radio station;
2. The interview was conducted around 12 noon (the precise time and name of the presenter are unfortunately unknown to my client);
3. My client is not a listener of Ligwalagwala radio station and was informed by others that statements were made on air that my client (who was at the time the headmaster of Kaapmuiden Primary School) had transfer school funds to his own personal account, as much as R50 000.00 twice a day.
4. The allegations made are unfounded, untrue and as a result my client's rights have been prejudiced.

Attempts to purchase the transcript from Ligwalagwala has to date not been successful and therefore you are kindly requested to investigate my client's complaint and revert to us at your earliest convenience.

**The complaint was further supplemented with the following:**

The internet banking set up for the school's account was limited to printing statements and could no transactions be conducted.

Any monies paid out by the school was done so by way of cheque. There were three signatories authorized to sign cheques at which any two signatures were needed and any given time.

Thus, the school did not have internet banking. My client could not possibly transfer monies from the school account to his own, not by way of cheque and not by way of an EFT.

It is my humble submission that allegations of this nature does not promote freedom of speech.

I once again request the Registrar to accept my apologies for the late lodgement and consider granting me condonation to lodge the complaint."

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

**"BCCSA COMPLAINT: CARLI LUNDY – LIGWALAGWALA FM – NEWS – 28.11.2016 – 12:00**

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

1. We deny that there was an interview with the Chairperson of the Kaapmuiden Primary School governing body on 28 November 2016 at 12:00 on Ligwalagwala FM.
2. The radio station, in its 12:00 bulletin played a clip of the chairperson the school mentioned above, reacting to the decision by the Department of Education to demote the school principal. This was after a disciplinary hearing.
3. It is our view that the School Governing Body is a legal structure to react on issues affecting an institution they are legally responsible for.
4. We would like the complainant to indicate as to which part of the bulletin defamed their client.

We submit that there was no contravention of the Code."

**[4] The transcript of the Ligwalagwala FM news clip reads:**

*"When we tried to talk to this gentlemen as the school governing body which is an authorised body to govern the school, the gentlemen was not willing to co-operate, the gentlemen operated a 32 days investment bank account without the HOD's approval which led to the school incurring penalties for breaching the investment contract. If my memory serves me well, there was a time "msakati" (journalist) in a year where there was a consecutive withdrawal of R15 000 in one day."*

**[5] The Complainant's attorney submitted further argument as follows:**

"It is our instructions that:

1. The investment account as mentioned in the clip was held with ABSA and not with Nedbank;
2. The decision to transfer money from the investment account to the cheque account was made by the then school governing body;

3. Two signatories signed the request to transfer money from the investment account to the cheque account;
4. The above transaction was never formulated in my client's charge sheet;
5. No reason exists why the aforementioned transaction as well as my client's name should have been mentioned on air as according to the investigations officer there was no misconduct as the aforementioned was not part of the charges brought against my client;
6. My client was never the only signatory on either the cheque book or the request forms to transfer money;
7. Airing the one sided clip without giving my client the opportunity to defend the allegation of transferring money without consent and having the school pay penalties was to harm my client's good name in the community;
8. None of the other signatories' names were mentioned, why?
9. The name of the Bank and the amount transferred are incorrect, did Mr. Myanga not make sure of his "facts" before going on air?
10. What purpose did the interview serve except to bring harm to my client's name;
11. Without requiring any form of proof of misconduct, SABC allowed such allegations to be aired in a language spoken by the majority of the people involved in the school and as a result my client was contacted by many people who heard the interview;
12. My client devoted 40 years to Kaapmuiden Primary School and to the education of children and airing an allegation of this nature for no other reason than to harm my client's name because of what can only be assumed as a result of personal grievances, should not be left unpunished.

It is my humble submission that Ligwalagwala acted reckless in airing the allegations without giving my client the opportunity to react thereto, especially when my client was called by name.

As a result thereof my client's good name was violated and Ligwalagwala has to date not once apologized or given my client the opportunity to respond to the false allegation against him.

Kindly note that I am not able to attend the tribunal as I'm in Pretoria High Court on the 23<sup>rd</sup> of February 2017."

## **EVALUATION**

- [6] The Complainant did not attend the Tribunal hearing; neither did the legal representative of the Complainant. From the papers that were filed with the BCCSA, it seems that the complaint was lodged outside the period of 30 days allowed by our rules. The reasons for the lateness appears to be the fact that the Broadcaster did not respond to a request by the Complainant for a transcript of the broadcast complained about and that the offices of the attorneys were closed from 15 December 2016 to 9 January 2017. Accordingly the Complainant's attorney applied in writing for condonation for the late lodging of the complaint. At the hearing our attention was

not drawn to this application for condonation and the Broadcaster did not oppose such application. We therefore proceeded with the hearing on the merits of the complaint. It is only after the hearing that we became aware of the application for condonation when going through all the papers. By proceeding with the hearing and in the absence of any objection against the application for condonation, we have *de facto* granted condonation and we shall now proceed with the merits of the complaint.

[7] The original broadcast was in Seswati. As no member of the Tribunal is conversant with the language, we requested a transcription of the broadcast, which was delivered after the hearing. The transcript appears under paragraph [4] above. After reading the transcript we have come to the conclusion that it is not easy to make sense of it. For instance, the transcript begins with: "*When we tried to talk to this gentlemen ..*". It should probably read "gentleman", but there is no context, so it is not clear who this person is to whom the broadcast refers. Then follows some allegations of financial mismanagement, and a person remarks: "*If my memory serves me well ...*" Again there is no context and it is unclear who is talking. There is a reference in the Broadcaster's response to a disciplinary hearing that had taken place, but no reference is made in the transcript of such hearing. This all adds up to a very unsatisfactory situation where it is not clear at all what was broadcast and what was said about whom. According to the written evidence before us, it appears that the Complainant did not hear the broadcast but was informed by other people that some allegations were made against him in the broadcast. Although we could not make much sense of the transcript, we are satisfied that the broadcast did cast aspersions on this Complainant.

[8] The broadcast complained about was a news item. In terms of clause 11(1) of the Free-to-Air Code of Conduct, news must be reported truthfully, accurately and fairly. The BCCSA is aware of the difficulties with which broadcasters are often faced when collecting news for broadcasting, especially in the light of the requirements of clause 11(1) mentioned above. A demonstration of such awareness is to be found in our judgment in the case of *A Koekemoer v Jacaranda FM*<sup>1</sup>. In this case the broadcaster

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<sup>1</sup> Case Number 03/2012

inserted a news item in one of their hourly bulletins on the apparent selfdeath of a young boy. In another news item an hour later they named the dead boy but stated that he had died in a shooting accident. The mother of the boy was traumatised, especially by the fact that the name of the boy was broadcast before the boy's next of kin had been notified of the death, and she lodged a complaint with the BCCSA. At the hearing the broadcaster explained the procedure used by broadcasters to verify the truthfulness of news items. In that instance they had to contact the communications department of the SAPS when an unnatural death occurred, which they did. The Tribunal accepted the bona fides of the broadcaster in doing what they could to verify the correctness of the news item before broadcasting it.

[9] In the present case the matter was raised why the Broadcaster did not contact the Complainant before broadcasting a news item in which his dignity was ostensibly impaired. In response, the Broadcaster referred us to the policy of the Department of Education of Mpumalanga Province which, according to the Broadcaster, prohibits them to directly contact an official of the department. According to this policy all media enquiries must be directed to the designated spokesperson of the department. We have no further information on the implementation of this policy, but there are some worrying aspects about this policy, should it be applied blindly and unnuanced. It is understandable that on matters affecting the department, like for instance the failure by the department to have school books delivered timeously, the department would insist that only one spokesperson for the department would be allowed to speak to the media. Such a matter could affect the whole department detrimentally. But in the matter at hand we are dealing here with the right of the individual not to be impaired in his dignity. The need to get the Complainant's side of the story before broadcasting material which could detrimentally affect him, cannot fairly be channelled through the spokesperson of the department. He or she is not in a position to explain the Complainant's side of the story – only the Complainant can do this. We therefore find that the Broadcaster violated clause 11(1) of the Code.

[10] As far as sanction is concerned, we do not think it would be fair to impose a fine on the Broadcaster. The argument by the Broadcaster at the hearing was that they considered themselves bound by the policy of the Department of Education and was

therefore prohibited from approaching the Complainant, who is an official of the department. We accept the bona fides of the Broadcaster in this regard. In fairness to the Complainant, we think that the Broadcaster should allow him airtime to put his side of the story to the audience of the Broadcaster. Our order is that the Broadcaster should do so within fourteen days of receipt of this judgment and to report forthwith to the Registrar of the BCCSA on the outcome.

**The finding is that the broadcast complained about was in violation of clause 11(1) of the Code. The complaint is upheld. The Broadcaster is ordered to allow the Complainant airtime in order to present his side of the case, if he so wishes, within fourteen days of this judgment and to report to the Registrar of the BCCSA on the outcome thereof.**



**HP VILJOEN  
CHAIRPERSON**

*Deputy Chairpersons Lötter and Makeketa concurred with the judgment of the Chairperson*