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**CASE NUMBER: 09/2019**

**DATE OF HEARING: 19 JUNE 2019**  
**JUDGMENT RELEASE DATE: 29 JULY**

**PASTOR LUKAU**  
**ALLELUIA MINISTRIES INTERNATIONAL**

**1<sup>st</sup> COMPLAINANT**  
**2<sup>ND</sup> COMPLAINANT**

**vs**

**SABC 1**

**RESPONDENT**

**TRIBUNAL: MR BRIAN MAKEKETA (DEPUTY CHAIRPERSON)**  
**ADV BOITUMELO TLHAKUNG**  
**MS NOKUBONGA FAKUDE**

**For the Complainants: Adv D T v R Du Plessis SC instructed by of Sim & Botsi Attorneys Incorporated accompanied by Mr T Mr. Sean Sim, Attorney and Mr Busi Gaca, minister and spokesperson of Alleluia Ministries International (AMI)**

**For the Respondent: Mr. Nyiko Shibambo, Acting Manager: Compliance, SABC accompanied by Ms. Refilwe Timana, Acting Compliance Officer, Mr Montleyane Diphoko, Editor - TV Current Affairs of the SABC and Mr Mlunglisi Shivamba Executive Producer, The Cutting Edge.**

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*Controversial issue of public interest – Tribunal finding that the Respondent did make reasonable efforts to afford the Complainant the right to reply – Tribunal finding that the Complainant failed to cease the opportunity to reply more than three times - Tribunal finding that the Complainant's right to privacy, dignity and reputation being that of a public figure overridden by the legitimate public interest - The Respondent found not to have contravened the Code of Conduct - Lukau and Alleluia Ministries vs SABC 1, Case No: 09/2019 (BCCSA)*

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## SUMMARY

The Complainant, a well known public figure and a head Pastor of Alleluia Ministries, posted a YouTube video where he ‘suspiciously’ resurrected a man from the coffin. This so-called miracle attracted global controversy over dubious religious practices. SABC 1 took interest in the matter and made an investigative documentary, offering the Complainant reasonable opportunity to state its side of story. The Complainant alleges that the Respondent failed to fairly present opposing views as it was not afforded the right of reply. From the correspondence between the parties, the Complainant evidenced a clear lack of interest to cease the opportunity and accordingly respond to the Respondent’s request of a face to face meeting. The Tribunal found that the Respondent made reasonable efforts to fairly present the Complainant’s version even though the Complainant refused to appear on camera. The Tribunal also found that the Complainant’s right to privacy and dignity, being that of a public figure, was overridden by a legitimate public interest. No contravention of the Code was found.

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## JUDGMENT

### ADV TLHAKUNG

[1] The Registrar received a complaint from Pastor Alph Lukau of Alleluia Ministries International, in his personal capacity as well as in his capacity as the head Pastor of Alleluia Ministries [*hereinafter in toto or interchangeably referred to as ‘the Complainant’*] regarding the Cutting Edge broadcast titled ‘Fake Prophets’ on the 12<sup>th</sup> of March 2019 and at 21:30 by the SABC 1 [*hereinafter referred to as ‘the Respondent’*].

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

**“RE:PASTOR ALPH LUKAU / ALLELUIA MINISTRIES INTERNATIONAL – COMPLAINT REGARDING THE BROADCAST OF THE CUTTING EDGE PROGRAMME ON SOUTH AFRICAN BROADCASTING CORPORATION CHANNEL 1 (“SABC 1”)**

1. We act on behalf of Pastor Alph Lukau ("Pastor Lukau") in his personal capacity as well as in his capacity as the head Pastor of Alleluia Ministries International ("AMI") as well as on behalf of AMI (collectively referred to as "our clients").
2. We address this letter to you at the instance of our clients who have consulted us in respect of the programme presented by Cutting Edge, titled "Fake Prophets", which was broadcast by the SABC on channel SABC1 ("the broadcaster") on 12 March 2019 at 21h30 ("the programme").
3. The programme was advertised during the course of the day on 12 March 2019 through the broadcast of a short video clip on the broadcaster's website as well as various other platforms such as Facebook and SABC Digital News as well as on radio. The short video clip was titled: -

*"Coming up on Cutting Edge on Tuesday – False Prophets (12 March 2019)"* ("the advertisement");

4. The description provided underneath the advertisement stated the following: -

*"Tonight on Cutting Edge we unmask false prophets, following the 'Resurrection Fake Miracle' recently. We speak to alleged recruiters and miracle actors who claim they have been paid by the church to fake healings. Tonight on Cutting Edge SABC1, 21h30. For more news, visit: sabcnews.com".*

(See <https://www.youtube.com/watch?v=21Hj0imsvlc>.)

5. As mentioned above the programme was aired by the broadcaster on 12 March 2019 at 21h30 on channel SABC 1. The programme was subsequently uploaded by the broadcaster onto its YouTube channel, being SABC Digital News, on 13 March 2019 under the title *"Cutting Edge: Fake Prophets, 12 March 2019"*. (See <https://www.youtube.com/watch?v=x0lvU7NlhXk>)
6. In addition; the programme was subsequently, further published on various YouTube channels, by, amongst others the following: -

- 6.1. Provo News, on 13 March 2019, under the title *"Pastor Alph Lukau expose on SABC Cutting Edge – 12 March 2019"* with the description of the programme being as follows: -

*"SABC Cutting Edge expose of Pastor Alph Lukau of the Alleluia Ministries aired on Tuesday, 12 March 2019"*

(See <https://www.youtube.com/watch?v=IHwefprbH9g>)

- 6.2. MzansiCASTER, on 13 March 2019, under the title *"Alph Lukau Exposed on Cutting Edge – SABC"*.

(See [https://www.youtube.com/watch?v=Uv6M\\_2GDikQ](https://www.youtube.com/watch?v=Uv6M_2GDikQ))

Ricky G Leamus, on 12 March 2019, under the title *"Cutting Edge 12 March 2019 – Pastor Alph Lukau Exposed/Religion of the Pharisees"*.

(See <https://www.youtube.com/watch?v=2ryitPQn5ZU>.)

- 6.3. MetroTV News – Zimbabwe, on 13 March 2019, under the title *"Pastor Alph Lukau Exposed on Cutting Edge (SABC) More Claims Against Pastor Alph Lukau Are Brought"*, with the description of the programme being as follows:-

6.4. *“Pastor Alph Lukau Exposed On Cutting Edge (SABC) As More Damning Claims Against Pastor Alph Lukau Are Brought ‘I Was Never Healed - I Never Had HIV!’”*

(See [https://www.youtube.com/watch?v=vq\\_FdsaMsfg](https://www.youtube.com/watch?v=vq_FdsaMsfg))

6.5. Thabang Lebogo, on 12 March 2019, under the title *“Cutting Edge 12 March 2019 Full (Pastor Lukau Exposed)”*, with the description of the programme being as follows:-

*“FAKE PROPHETS EXPOSED ON CUTTING EDGE”*

(See <https://www.youtube.com/watch?v=1gNOJlejYm0>)

7 Insofar as the programme is concerned our clients have instructed us to lay a complaint against the broadcaster, which we hereby do, with the Broadcasting Complaints Commission of South Africa (“BCCSA”) in terms of the Free-To-Air Code of Conduct for Broadcasting Service Licensees (“the Code”) on the basis that, amongst others, the programme:-

- 7.1. contained wrongful, false and defamatory statements of and regarding our clients;
- 7.2. did not afford our clients a right of participation/reply;
- 7.3. failed to fairly present opposing views;
- 7.4. was biased against our clients;
- 7.5. failed to indicate that much of what was put forward in the programme, amounted to nothing more than suppositions/rumours and opinions;
- 7.6. whilst titled and advertised with reference to “false prophets” the programme focused exclusively on our clients whilst presenting certain video footage/material which was not in any way related to our clients. This unrelated footage (which we will deal with in further detail below) was presented on the basis that it emanated from and represented (incorrectly so) certain practices carried out by our clients;
- 7.7. contained comment that was neither honest nor were such comments based on facts truly stated or fairly indicated and referred to;
- 7.8. amounted to a clear breach of the privacy, dignity and reputational provisions as set out in the Code;
- 7.9. presented one sided content and solicited one sided views which gave rise to our client being characterised, as amongst others a “cult”.

8. In support of the above we record the following specific complaints under the following headings.

We record that the headings have been inserted for convenience purposes only and should not be seen as limiting the ambit of each complaint.

## COMPLAINT 1: CONTROVERSIAL ISSUES OF PUBLIC IMPORTANCE- RIGHT OF REPLY

9. We are instructed that despite the fact that the content of the programme clearly fell within the ambit of section 13 of the Code, the broadcaster failed to: -
  - 9.1. *“...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.”;*
  - 9.2. *afford our clients “...the right to reply to such criticism on the same programme. If this is impracticable, reasonable opportunity to respond to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned”.*
10. Having regard to the controversial issues, allegations and criticisms contained in the programme, issues, allegations and criticisms contained in the programme, which were directed at our clients, our clients should certainly have been afforded a right to reply on the same programme.
11. Even if it could possibly be argued that it was impractical to include our clients' views in the programme (which is denied), our clients should have at least been granted an opportunity to participate in a pre-arranged discussion programme. The provisions of the Codes are clear in this regard.
12. There can be no doubt that the broadcaster failed to comply with these obligations as set out above in that:-
  - 12.1. our clients were not afforded the right to reply either in the same programme as envisaged in the Code, or at all, if one has regard to the import and intent of the Codes;
  - 12.2. the broadcaster interviewed 17 different commentators and sources yet did not, in the face of these very damaging allegations, endeavour to afford our clients a proper right of reply or opportunity to deal with the slew of false, negative and damaging allegations as well as controversial programme content.
13. No official comment was sought from our clients in relation to the content of the programme. The broadcaster did however create the impression that it had in fact obtained comment from our clients by playing a voice clip of Ms. Busi Gaca (“Ms. Gaca”), which voice clip was obtained by Mr Maageketla Mohlabe (Mr Mohlabe), who is credited as working on the programme, from a recorded telephonic discussion. This discussion was recorded some time before the broadcasting of the programme and was obtained as part of a general comment provided by Ms. Gaca in relation to the Service. It was certainly not obtained with reference to the content programme and none of the actual allegations as contained in the programme were in fact put to Ms. Gaca for comment. This again evidences the fact that our clients were not afforded the right of reply and the biased nature of the programme which seeks to convey, falsely so, the distinct impression that comment was sought and obtained from our clients in relation to the serious and damaging allegations made against our clients, when it was in fact not.

14. What makes matters worse is that the programme content was not limited to the Service, but rather the programme ranged far and wide in the making of serious and damaging allegations in respect of which no comment whatsoever was sought, and no right of reply afforded. We reiterate, in this regard, what has been stated in paragraphs 9 and 10 regarding the provisions of the Code.
15. It is our clients' view that the broadcaster: -
  - 15.1. has, through the conduct as set out above, intentionally deprived our clients of the rights afforded to them in the Code to dispute the content of, and/or to reply to the allegations contained in the programme;
  - 15.2. had through the advertisement of the programme deprived our clients of their right to certain legal remedies which would have been available to them prior to the programme being broadcast.
16. We record further that our clients, after becoming aware of the broadcaster's intention to after becoming aware of the broadcaster's intention to broadcast the programme, instructed us to immediately address correspondence to the broadcaster which we duly did. In such correspondence we, on behalf of our client- amongst others:-
  - 16.1. informed the broadcaster that should they proceed with the intended broadcast, their conduct, in failing to contact our clients for their reply and/or comment, would amount to a breach of the Code;
  - 16.2. that our clients were, through the publication of the advertisement, deprived of their right to approach the court for urgent relief.
17. A copy of such correspondence, together with the cover email dated 12 March 2019, is attached hereto marked "A" ("our correspondence"). We also mention that a message was forwarded to the broadcaster through their online portal at <http://www.sabc.co.za/sabc/contact/>. To date we have received not received a response from the broadcaster to either our correspondence or the message referred to above.
18. This failure to afford our clients the right to reply contributed directly to the broadcaster failing to comply with, amongst others, its obligations to present opposing views (we will deal with this below).
19. Having failed to comply with the fundamental requirement/obligation of affording our clients a right of reply the broadcaster, in addition, turned a blind eye to: -
  - 19.1. the Media Statement had been forwarded to the broadcaster on 27 February 2019 by way of email, with the email address being [magwedzehv@sabc.co.za](mailto:magwedzehv@sabc.co.za) (A copy of the email evidencing the delivery of the Media Statement and the Media Statement are attached hereto marked "B" and "C" respectively). The Media Statement provided our clients' official account of the events that occurred at the Service;
  - 19.2. those elements of the video footage of the Service (see <https://www.youtube.com/watch?v=KHx6LCM5h1o&t=6998s>) ("the video footage") which clearly disproved the biased version that the broadcaster was determined to convey in relation to the Service, despite the broadcaster obviously having viewed the video footage when preparing the content of the programme;

19.3. certain of our clients opposing views which had been published in the media such as, amongst others: -

19.3.1. a radio interview conducted by Pastor Lukau on PowerFM on 27 February 2019, a recording of which interview is, and has been, available on PowerFM's website since 27 February 2019;

19.3.2. numerous reports by various media agencies, which reports included reference to the Media Statement, as well as additional statements provided by our clients' representative.

20. In support of the above, and from the video footage, it is clearly evident that: -

20.1. at no stage have our clients claimed that the person who was identified by his family members as Elliot (who has subsequently been identified as Mr. Moyo) was resurrected by Pastor Lukau. (We will, for the sake of continuity, make reference to Mr. Moyo in the remainder of this correspondence this notwithstanding the fact that Mr. Moyo was initially identified to Pastor Lukau as Elliot.);

20.2. when the mortuary vehicle arrived at AMI's premises it is stated that there was already movement in the coffin (see the video footage at approximately 1:55:13);

20.3. prior to even praying for Mr. Moyo, Pastor Lukau states that Mr. Moyo is in fact breathing (see the video footage at approximately 2:00:49);

20.4. during the service (see the video footage at approximately 2:33:48) Pastor Lukau clearly states that the extent of the miracle needs to be verified and that such verification should include: -

20.4.1. interviewing Mr. Moyo's doctor;

20.4.2. interviewing everyone in the mortuary.

21. In addition to the above we record that a total number of 17 people, from various backgrounds including members of the public, academics, religious leaders etc. appear in the programme and 15 of those people provided damaging opinions and comments relating to our clients. Of the 17 people interviewed, only 2 people, being Mr. Sammy Badaki and Ms. Gaca, presented opposing views (and those views were limited to the Service) whilst the remaining 15 people made allegations and presented views on a broad range of topics/issues which allegations and views caused our client to be regarded as amongst others a cult. Clearly the broadcaster did not present opposing views and it is also clear that they had no intention of doing so as their clear intention was, we are instructed to record, to create a biased narrative that depicted our clients as being fake, manipulative and abusive.

22. In light of what has been set under the heading of Complaint 1 our clients submit that the broadcaster has, in flagrant disregard of the Code, failed to: -

22.1. afford our clients a reasonable right of reply;

22.2. contact our clients in order to seek our clients' version and/or replies to the serious allegations and damaging allegations contained in the programme;

- 22.3. respond to, or take cognisance of, our correspondence. In fact, to date, the broadcaster has not responded to our correspondence;
- 22.4. incorporate our clients' Media Statement which was at that stage widely available, and could easily have been obtained through even the most basic level of investigation and research on the intended content of the programme;
- 22.5. take into consideration, and report on, the video footage of the Service in its entirety. Instead selective segments of the footage were summarised and broadcasted (out of context) in such a manner as to advance certain damaging views and opinions;
- 22.6. present opposing points of view.

**COMPLAINT 2: FAILURE TO PRESENT NEWS TRUTHFULLY ACURATELY AND FAIRLY**

- 23. The programme contained extensive footage which was unrelated to our clients, but which was presented in such a manner that such footage and the practices depicted therein were attributed to our clients these included:-
  - 23.1. individuals eating grass;
  - 23.2. individuals being sprayed in the face with some form of aerosol insect killer;
  - 23.3. individuals drinking what appears to be Dettol (the cleaning detergent);
  - 23.4. individuals eating snakes.
- 24. None of this material nor the practices depicted therein are in any way associated with our clients nor can they be attributed to our clients. Notwithstanding this reality the programme attributed these both directly and by inference to our clients. In this regard our clients record that they have never instructed any member of AMI, or anyone for that matter, to eat grass or snakes or drink cleaning detergents nor has Pastor Lukau ever sprayed anyone in the face with any kind of insect killer.
- 25. This amounted to, insofar as our clients are concerned, an intentional departure from the facts by a clear distortion and misrepresentation of the programme content.
- 26. We furthermore mention that the complaint relating to the broadcaster ignoring the video footage is to be included under the heading of this second complaint as it serves to support the complaint that the programme did not report the essence of what transpired at the Service accurately and fairly.
- 27. A further focal point of the programme, and certainly one of the controversial topics dealt with, related to the allegations made by Mr. Blessing Kwemelao ("Mr. Kwemelao"). The allegations made by Mr. Kwemelao are replete with factual inaccuracies, which inaccuracies could easily have been clarified if the broadcaster had acted in terms of the Code. In this regard we are instructed to record that: -
  - 27.1. Mr. Kwemelao is not employed by Pastor Lukau, or AMI, nor has he ever been so employed, either as alleged, or at all;

- 27.2. Mr. Kwemelao is not a leader in AMI;
- 27.3. our clients confirm that Mr. Kwemelao was present during at least one of the Church Services lead by Pastor Lukau at AMI. The specific attendance is depicted in an image shown by Mr. Kwemelao during the programme. Whilst the programme contends that Mr. Kwemelao was a church leader, and seeks to confirm this by using the image, the reality is that Mr. Kwemelao was certainly not a church leader and the image shown was in fact taken from video footage where Mr. Kwemelao was in fact being prayed for by Pastor Lukau as he was seeking a spiritual invention in relation to marital problems. This is the only interaction between Mr. Kwemelao and our clients.
28. In addition to what has been stated at paragraph 27 above the lack of evidence provided or referred to in the programme to support what is alleged by Mr. Kwemelao, is clearly in contravention of the Codes. In this regard no evidence is provided to support Mr. Kwemelao's allegations relating to amongst others: -
- 28.1. his employment/position within AMI;
- 28.2. the instructions allegedly received from our clients, or the instructions specifically referred to in the programme that were allegedly received by message from '*the lady he was working with*', to act as he alleges in the programme, being that he '*trained visitors to stage disabilities during sermons*';
- 28.3. the documentation referred to in the programme that Mr. Kwemelao was allegedly in possession of to provide to the persons he allegedly 'recruited' as per our clients' alleged instructions;
- 28.4. his relations or dealings with further persons who he allegedly 'enlisted'. It being mentioned that there were '*many others*';
- 28.5. the identity of such further persons;
- 28.6. at which specific services conducted by our clients where these '*actors*' alleged to have been involved. We mention that all services held at AMI are available online yet not one service is referenced by Mr. Kwemelao;
- 28.7. the other teams of '*recruiters*' allegedly hired by our client for the purposes as stated in the programme;
- 28.8. the individuals who it is alleged that he sent messages to. In this regard the broadcaster should have at the very least have: -
- 28.8.1. confirmed that the messages had been sent by contacting the recipient;
- 28.8.2. confirmed that the recipient has been involved in practices which Mr. Kwemelao alleged had taken place;
- 28.8.3. referenced the allegations to a particular service;
- 28.8.4. presented responses received from these individuals.
- 28.5. the identity of such further persons;

- 28.6. at which specific services conducted by our clients where these 'actors' alleged to have been involved. We mention that all services held at AMI are available online yet not one service is referenced by Mr. Kwemelao;
- 28.7. the other teams of 'recruiters' allegedly hired by our client for the purposes as stated in the programme;
- 28.8. the individuals who it is alleged that he sent messages to. In this regard the broadcaster should have at the very least have: -
- 28.8.1. confirmed that the messages had been sent by contacting the recipient;
- 28.8.2. confirmed that the recipient has been involved in practices which Mr. Kwemelao alleged had taken place;
- 28.8.3. referenced the allegations to a particular service;
- 28.8.4. presented responses received from these individuals.
29. Ultimately none of the allegations made by Mr. Kwemelao were properly tested. The only proof offered was a picture of Mr. Kwemelao attending a church service (explained above) and certain text messages that Mr. Kwemelao contends that he sent, the authenticity of which were also not tested (as set out above). Notwithstanding this lack of evidence the broadcaster, in addition to not having afforded our clients a right of reply, sought to publish as fact allegations which were untested and false and failed to qualify that such publications were based on opinions, supposition, rumour or allegations as they are required to do so in terms of the Code. In addition, the broadcaster failed to obtain corroborating evidence or test the allegations made by Mr. Kwemelao. We mention further that our clients have raised certain additional concerns relating to the messages allegedly sent by Mr. Kwemelao. We are awaiting a written report in this regard and we may upon receipt of such report supplement our clients' complaint. All of our clients' rights in this regard remain strictly reserved,
30. Insofar as the allegations made by Ms. Samantha Revesai ("Ms. Revesai") are concerned our client was not afforded an opportunity to deal with/respond to these allegations. Having been deprived of this right our clients would, at the very least, have expected the broadcaster to interrogate the veracity of these allegations by querying amongst others: -
- 30.1. as to why Ms. Revesai had delayed in making these allegations, taking into consideration that the allegations related to incidences that occurred roughly 2 years ago, this particularly given that fact that she had been promised payment of a monthly amount of money which she, on her own version was in desperate need of;
- 30.2. as to why Ms. Revesai has not approached alternative forums for relief against our clients;
- 30.3. as to why Ms. Revesai had now made the decision to cooperate with the broadcaster, this

31. We reiterate that having been denied the opportunity to interrogate the allegations made by Ms. Revesai our clients were deprived of the opportunity to determine the true basis for her making these allegations which, insofar as they suggest that our clients were involved in "Fake Miracles" would have been denied.
32. In terms of the anonymous allegations made by Nelly and Paul (which we are advised are not their real names) these allegations again were untested and false. We mention by way of example one anonymous source quotes certain practices relating to a church, which church she claims is AMI, however the quoted practices have never happened within AMI. This, our client is able to demonstrate, unequivocally, as all of AMI's services are recorded. These allegations which are false and malicious are reported by the broadcaster as fact.
33. Insofar as the allegations made by the implicated funeral parlours are concerned these were similarly not tested nor were our clients given an opportunity to demonstrate that these had been falsely made. In this regard we attach hereto as annexure "D" correspondence which we have, on behalf of our client, addressed to the funeral parlours which demonstrated the different versions that have been put forward by the funeral parlours in relation to their involvement in the allegations surrounding the service. In addition, we attach hereto as annexure "E" correspondence from Kingdom Blue Funeral Service in which they have distanced themselves from the allegations made by Kings and Queens in relation to our clients.
34. It is our clients' view that a broadcaster is not justified in broadcasting an allegation just because someone had made the allegation. In terms of the Code, the broadcaster has to be relatively confident that the allegation is reasonably true having regard to the source of the facts. This infers that there is a certain level of verification that is required, this verification process has not been followed, in fact it has simply been ignored, by the broadcaster in this instance.
35. As far as the allegations made by anonymous persons in the programme are concerned our clients once again re-iterate that they were not afforded an opportunity to respond to the allegations made by such persons.
36. No reasons are provided as to why the identities of certain persons are excluded from the broadcast. As our clients see it, the allowance by the broadcaster of allegations to be made anonymously, without good reason being provided to explain the anonymity, allows for persons to say whatever they like, without the fear of being challenged or being found to have been acting maliciously.
37. In support of what is stated above, there is only one scenario expressly provided for in the Code which prevents the identity of a person being divulged and this is in the instance of rape victims and victims of sexual violence. Certainly, the conduct by the broadcaster in concealing the identity of the persons in the programme cannot be explained or supported by the provisions of the Code.
38. We also record that our clients never '*downplayed the faking of miracles*' as was alleged by the reporter during the programme.
39. Self-evidently our clients were significantly prejudiced by: -
  - 39.1. we reiterate, not being afforded a right of reply;
  - 39.2. the broadcaster failing to interrogate/investigate the allegations made by Ms. Revesai, Mr. Kwemelao and the remaining sources;

- 39.3. the broadcaster presenting material not related to our clients to cast our clients in a particularly bad light;
- 39.4. the broadcaster presenting untested versions as fact without any caution to the viewer;
- 39.5. the selective use by the broadcaster of only specific portions of the video footage of the Service (the specific portions incorporated in the programme being intentionally selected to promote a biased and negative view of our clients);
- 39.6. the broadcaster has failed to report on the content of the programme truthfully, accurately and fairly and its conduct, in our clients' view, amounts to biased reporting, which biased reporting has, and continues to, cause our clients to suffer prejudice.

### COMPLAINT 3: PRIVACY, DIGNITY AND REPUTATION

- 40. Apart from being factually incorrect, as set out above, the broadcaster in our clients' view failed to exercise any degree of care and consideration, and certainly not an exceptional level thereof, when reporting on the matters contained in the programme which relate to our clients' privacy, dignity and reputation as per section 15 of the Code. In this regard the unsubstantiated statements and opinions expressed in the programme, as set out below, fail to satisfy the standard envisaged in the Code: -
  - 40.1. the reporters use of the phrase "*...self-styled prophets.*", while Pastor Lukau's image is displayed on the screen;
  - 40.2. *...they are not any different to some crazy cult...*;
  - 40.3. *...to use that vulnerability, for any kind of religious gain, which is false, I quite frankly think is*
  - 40.4. *...the church has struggled right from the beginning with, shall we call it 'gimmicks'...*;
  - 40.5. *...the whole thing was staged...*;
  - 40.6. *...there is almost a competition of gimmicks...*;
  - 40.7. *...he has done a wheelchair stint and he has done a couple of other stints with the same church...*;
  - 40.8. *...was this a similar alleged hoax like previous others...*;
  - 40.9. *...this is actually the fundamental violation of human rights...*;
- 41. The reservation contained in section 15 of the Code which states that in cases of legitimate public interest the rights to exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals may be disregarded does not, in our to our clients' mind, find application in this instance.

42. In fact, it is our clients' view that the broadcasting of the programme, was in fact against the public interest, given our clients' status in the community and in this regard that the broadcaster should have, in addition to its responsibility set out in the Codes, adopted a higher level of investigation and verification of the allegations reported on especially considering the seriousness and impact of such allegations.
43. Our clients are aware of the fact that, as per section 12 of the Code, presenters/broadcasters are entitled to broadcast comment made on and criticism of events of public importance. This entitlement, however, is restricted by, and closely linked to, section 13 of the Code, in that while comment and criticism are allowed to be broadcast, a broadcast of this nature is only allowed when the person/persons to whom the comment/criticism is directed at is afforded an opportunity to present an opposing point of view. In this regard I also refer to what is stated below in paragraph 49 in respect of the comments expressed by the reporter (which comments were clearly structured to create a certain negative impression of our clients without having regard to the full facts and without granting our clients a right of reply).
44. As has been demonstrated our clients were not afforded a proper right of reply and therefore the broadcaster's comments, in so far as they are alleged to be in line with section 12 of the Code fall short of compliance with the Code and amount to impairment of our clients' privacy, dignity and reputation.

#### **COMPLAINT 4: DISTORTING, EXAGGERATING AND MISREPRESENTING THE FACTS**

45. The entire programme, from its pre-broadcast advertisement, and title right through to the end of the broadcast of the programme, exhibits, from our clients' perspective, the purposeful and intentional distortion, misrepresentation and summarisation of certain content within the programme and use of exaggeration tactics, despite such conduct being prohibited by the Code.
46. The cumulative effect of the failure by the broadcaster to act in terms of the Code has caused our clients to suffer considerable, if not irreparable, harm. **clients to suffer considerable, if not irreparable, harm.**
47. In support of the allegations set out directly above we bring the following to your attention: -
- 47.1. where reporting contained in the programme was not based on fact, and was rather founded on opinion, supposition, rumours or allegations, the broadcaster, in contravention of the Code, failed to qualify such opinions, suppositions, rumours or allegations as such. Whilst this failure, even considered on its own, amounts to a breach of the broadcaster's responsibilities in terms of the Code, the failure further serves to misrepresent to the viewers that such opinions, suppositions, rumours or allegations are facts that have been verified by the broadcaster as is required.
48. The distortion in the broadcasting of the of the content in the programme, specifically of the content referred to in paragraph 23 above, as well as the summarisation of, specifically the video footage of the Service, amounts to an obvious misrepresentation and failure by the broadcaster to present news in a fair manner and in the correct context, which failure impairs our clients' dignity.

49. In addition to the above the obvious summarisation by the broadcaster of relevant information surrounding the Service is evident when one has regard to the portion of the programme in which video footage is shown of Pastor Lukau praying over Mr. Moyo. In this regard:-
- 49.1. at the same point in the programme the reporter/narrator states that “*on closer inspection there are visible signs of life*”;
- 49.2. the reporter/narrator however fails to continue and state the fact that Pastor Lukau has already (even prior to praying Mr. Moyo and upon opening the coffin earlier when the hearse entered the premises of AMI) stated that Mr. Moyo was breathing and that the observation by the reporter/narrator is in fact supportive of our clients’ version of events reporter/narrator is in fact supportive of our clients’ version of events during the Service;
- 49.3. the broadcaster instead elects to insinuate that these ‘*signs of life*’ stand as evidence to be held against our clients to prove a certain version of events, being that our clients staged a miracle;
- 49.4. if the broadcaster had any regard to the Media Statement and to the entire video footage of the Service, which would have been required for a programme to be regarded as fair and accurate, the above statement by the reporter/narrator should surely not have been included in the manner in which it was.
50. The broadcaster’s decisions regarding whom to interview and for how long, as well as which material to include in the programme, and which to not include, has, in our clients’ view, not been performed with sufficient or reasonable fairness or impartiality in order to enable viewers to make up their own minds about the content of the programme.

### **CONCLUSION**

51. If regard was had to the possibility of causing harm and severe reputational damages to our clients prior to the broadcast of the programme, the broadcaster should have, at the very least, subscribed to the minimum standards set out in the Codes.
52. The level of public interest in the content of the programme, in our clients’ mind, should have prompted the broadcaster to, in addition to its responsibility set out in the Code, adopt a higher level of investigation and verification of the allegations reported on especially considering the seriousness and impact of such allegations.
53. Based on the above submission, we are of the view that broadcaster through the broadcast of the programme clearly contravened the provisions of the Code and we hereby submit this complaint for your attention and adjudication.
54. We confirm finally that this complaint is submitted to the BCCSA on the basis that it will not impact on our client’s rights to pursue further and/or additional remedies in relation to the programme, and all of our clients’ rights in this regard remain reserved.
55. Should you require any additional information, please do not hesitate to contact writer.”

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

**“BCCSA COMPLAINT - PASTOR ALPH LUKAU / ALLELUIA MINISTRIES INTERNATIONAL - SABC 1 - CUTTING EDGE - 12.03.2019 - 21:00**

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

1. Pastor Alph Lukau is a public figure who conducts his church activities publicly. It is for this reason that his conduct is interrogated and subjected to public scrutiny.
2. The *Cutting Edge* broadcast opened with Samantha Revesai who is paraded in front of hundreds of Alleluia Ministries International followers as being HIV positive. This broadcast was even uploaded on the church's YouTube platform. The church elder announced that she was HIV positive before, on the contrary Samantha confined to *Cutting Edge* that she was unemployed and her situation was exploited by the church. She denied that she was ever HIV positive.
3. In the insert that was broadcast by the church on YouTube, Samantha was not even offered a chance to admit that she was indeed HIV Positive or not. She confirmed this again in the interview with *Cutting Edge* that her voice was drowned by the church elders who spoke on her behalf. This deed is inconsistent with the law which prohibits anyone from divulging someone's medical status without their consent.
4. The fact is that attaching stigma to people living with HIV/AIDS by displaying them in public against their will is inconsistent with the law of the country. It is even worse for people such as Samantha who still content that she was never infected, and now is carrying this stigma as a result of the church.
5. The story of the man who was allegedly raised from the dead generated even more attention. It is not true that *Cutting Edge* distorted facts around the story. The church made several statements to paint a different picture than the story they are presenting in their complaint now.
6. In the insert, it is Alleluia Ministries International which announced to the congregants that there was a family waiting with a dead man outside. According to oxford living dictionary, a corpse is a dead body, of a human being rather than an animal. The man was introduced by the church as a corpse to the congregation and this was posted on YouTube for everyone to see; therefore it is irrelevant whether the pastor or *Cutting Edge* noticed the signs of movement later or not.
7. However, there are contradicting statements coming from the church itself on this issue:
  - 7.1 **This man died since Friday!** - This are the words of Pastor Alph Lukau seemed to be corroborating the story of the alleged family that the man was indeed dead.
  - 7.2 **The dead man is alive! The coffin is empty!** - Again these words came from Pastor Alph Lukau as the man who was allegedly dead was now seen walking around the church as shown in the video posted on YouTube. It simple means that the man was dead but now is alive. This statement was received by the congregants with excitement as it was directed to them.
8. *Cutting Edge* did acknowledge the statements released later by the church at the time the programme was broadcast; this was included in the caption scripted by the producers as follows:

*The church has defended itself insisting never raising the man from dead. Ironically, the congregants were still sold to the miracle as true.*

9. Therefore, it is not true that Cutting Edge was not aware that the Pastor has admitted that he noticed that the man was breathing.
10. The complaint from the church raises issues of right of reply. The church was afforded an opportunity to respond, and Pastor Busi Gaca responded to the questions posed by the producers.
11. She refuted claims that Alleluia Ministries International paid people to act as sick and healed. Furthermore, she emphasized that *Cutting Edge* would not get direct access to Pastor Alph Lukau and that she was the only one authorised to speak on behalf of the church.
12. But now, the church seems to be making a U-turn on their statement about the availability of Pastor Lukau to *Cutting Edge*'s possible follow up episodes.
13. The SABC denies any wrongdoing relating in the broadcasting of the allegations of activities that happened at Alleluia Ministries International. The SABC further submits that there was no contravention of the Code."

[4] **The Complainant replied as follows:**

**"RE: PASTOR ALPH LUKAU/ ALLELUIA MINISTRIES INTERNATIONAL – COMPLAINTS REGARDING THE BROADCAST OF THE CUTTING EDGE PROGRAMME ON SOUTH AFRICAN BROADCASTING CORPORATION CHANNEL 1 ("SABC 1")**

1. We refer to the above complaints submitted to the BCCSA on 3 April 2019 ("the complaints"), your correspondence dated 25 April 2019 as well as the response from the SABC dated 25 April 2019 ("the response"), received with your aforementioned correspondence.
2. It is not our intention at this stage to address each and every allegation contained in the response in detail. In addition this reply must be read together with the complaints and insofar as a specific allegation is not admitted or dealt with, then such allegation must be regarded as being specifically denied.
3. At the outset we note that the response fails to deal with, or for that matter, answer any of the very specific complaints in a comprehensive manner, or as our clients' see it, at all. Instead the broadcaster, in the response, makes further unfounded and unsupported allegations about our clients, none of which amount to actual responses to the complaints. Due to the broadcaster's failure to properly address our clients' complaints the simple reality is that our clients' complaints stand unchallenged and as such our clients remain of the view that the relief sought, as contained in our correspondence dated 3 April 2019, should certainly be granted.
4. Having clarified the above, and whilst on a reading of the response, there are no factual or legal issues which have been raised which would necessitate further response our clients have nonetheless, instructed us to respond to certain of the issues raised in the response so as to avoid any possible misperception that such allegations/issues are not denied. We in addition reserve our clients' rights to deal in more detail with any such allegations/issues should we be so instructed in the future.

The issues which we are instructed to address are detailed under the specific paragraphs contained in the response, ad seriatim, hereunder.

5. Ad paragraphs 1, 10, 11 and 12

- 5.1. the fact that Pastor Lukau may be regarded as a “public figure” and that the broadcaster is of the opinion that “It is for this reason that his conduct is interrogated and subjected to public scrutiny” does not in any way absolve the broadcaster from having to comply and abide by the BCCSA Code of Conduct (“the Code”) when reporting on our client. In this regard, we draw your attention to clause 4 under section 11, titled “News” of the Code. As to how or why the broadcaster believes that our client being classified as public figure would allow them to ignore the Code is not explained and it is submitted that the reason for this is simply that there is no basis or justification for such a statement and to the contrary, the Code is particularly specific that matters of public importance deserve specific rights of reply;
- 5.2. we reiterate what has been stated in this regard in terms of complaint 1 (even based on the subjective description by the broadcaster);
- 5.3. with reference to the allegations contained in paragraphs 10 and 11 of the response, our clients deny that Minister Busi Gaca (“Ms Gaca”) was contacted for any comments in respect of the programme in question. We reiterate what was stated in the complaints regarding the comments sought from Ms Gaca. Our instructions in this regard were and remain clear, being that Ms Gaca was not contacted for comment in relation to the programme to which the complaints relate. As was stated in the complaints, the voice clip of Ms Gaca, used in the programme, was obtained some time prior to the airing of the programme, the comments provided by Ms Gaca were general comments in relation to the service given by our client on 24 February 2019 and definitely not made in reply to questions raised specifically relating to the content of the programme;
- 5.4. the fact that our clients were not contacted for comment in relation to the programme (either in accordance with the provisions of section 13 of the Code or otherwise) is further supported by the fact that, once our clients became aware of the intention to broadcast the programme, our clients immediately instructed us to address correspondence to the broadcaster (to which we have to date not received any response). We reiterate what has been stated in, amongst other, paragraphs 16 and 17 of the complaints;
- 5.5. the broadcaster has failed to furnish any actual response to the complaint relating to our clients’ right of reply. The statement contained in paragraph 10 of the response (which in any event does not constitute a proper right of reply as envisaged in section 13 of the Code) is simply not true;
- 5.6. there has been no ‘u-turn’ by our clients of any nature whatsoever, our clients were not granted the right of reply, as alleged and/or as is envisioned by the provisions of the Code and/or at all;

6. Ad paragraphs 2, 3 and 4

- 6.1. paragraphs 2, 3 and 4 of the response do not deal with any of the complaints, but rather contain biased and unfounded statements regarding, amongst others, the alleged treatment of Ms Revesai by our clients, which statements, even if true (which is vehemently denied), would not assist in answering any

of the complaints or justify the behaviour of the broadcaster relating to/in respect of any of the complaints;

- 6.2. paragraph 2 is just a repetition/furtherance of statements which have not been interrogated to the extent required by the Code (see paragraphs 30.1 to 30.3 of the complaints) and in respect of which our clients were not granted an opportunity to respond (paragraph 31 of the complaints);
- 6.3. the statements do not in any manner answer, or even attempt to answer, the very specific complaints made by our clients. The paragraphs in question contain nothing more than irrelevant and incorrect conclusions drawn by the broadcaster, once again without having afforded, and without having regard to, any reply from our clients;

7. Ad paragraphs 5

- 7.1. it is denied that AMI made several statements to “paint a different picture than the story they are presenting in their complaint now” as is recorded (without any substantiation) in this paragraph. As was set out in the complaints, our clients’ only official statement, which statement was forwarded to the broadcaster on 27 February 2019, and which statement was clear in the interview in which Pastor Lukau participated, which was aired on PowerFM on 27 February 2019, and numerous other statements by our clients all reflect the exact same view as has always been held by our clients;
- 7.2. the bald unsubstantiated statement by the broadcaster, once again does nothing to address or answer any of the complaints;

8. Ad paragraphs 6, 7, 8 and 9

- 8.1. our clients and ourselves have difficulty in understanding the reference to or definition of a corpse as set out in paragraph 6, or the relevance to such definition in the context of the complaint;
- 8.2. our clients’ statement regarding the events which transpired is unambiguous and is clearly set out in the Media Statement and repeated in paragraph 20 of the complaints;
- 8.3. the broadcaster failed to incorporate in any manner whatsoever the version of events as has always been stated by our clients;
- 8.4. it is denied that there have been any contradicting statements by our clients. If the broadcaster granted our clients a right of reply (as it should have in accordance with the Code), and/or took into account the content of the Media Statement, the interview on PowerFM referred to above or any of the statements of our clients, as were quoted in the media, the broadcaster would have had no difficulty in understanding that no contradictory statements were made by our clients;
- 8.5. as is evident from our clients’ statements, they were informed by the family of Mr. Moyo that he had died (on the previous Friday) and having regard to the fact that a person who was alleged to have died, subsequently being alive, there is nothing contradictory about the quoted statements. To the contrary, the statements squarely support our clients’ version of events;

- 8.6. AMI has not “defended itself insisting never raising the man from dead”. AMI and Pastor Lukau never, from inception, claimed that Pastor Lukau resurrected “*the man*”;
  - 8.7. as was clearly indicated in our clients’ Media Statement the above denial does not detract from the fact that our clients remain steadfast in their belief that through the power of God, a person can be resurrected;
  - 8.8. with reference to the statement that “it is not true that Cutting Edge was not aware that the Pastor has admitted that the noticed that the man was breathing” we must record that this was not an allegation made in the complaints;
  - 8.9. the allegations in the complaints surrounding the fact that Pastor Lukau stated that Mr Moyo was breathing, prior to even praying over him, are clearly set out in the complaints, see amongst others, paragraphs 26 and 49.2 and 49.3. If the broadcaster was then aware of the fact that Pastor Lukau stated that Mr Moyo was breathing, prior to even praying over him, why, considering the importance of such statement in the context of the programme, was such awareness not reported on;
  - 8.10. the content of these paragraphs, once again do nothing to address or answer any of the complaints;
9. Ad paragraph 13
- 9.1. it is concerning that the broadcaster fails to address the complaints in what it alleges is its response. In this regard we reiterate what is stated above and note that not in one instance of the “response” is reference made to any of the specific provisions of the Code and the alleged transgressions;
  - 9.2. the broadcaster merely denies any wrongdoing and baldly submits that there was no contravention of the Code, with no substantiating evidence in support of the denials;
  - 9.3. the complaints are clear and detailed and reference the various portions (and even the sections of the Code, where applicable) of the Code. The broadcaster did nothing to respond to those complaints and as such the complaints must be upheld;
  - 9.4. in the one instance where it appears that the broadcaster attempted to address a specific complaint (being complaint 1 in respect of the right of reply) the contention that such right of reply was afforded to our clients falls far short of what is required. In this regard and as was set out in the complaints, Ms Gaca was not furnished with a right of reply in respect of the content of the programme. As stated above, we reiterate what has been stated in the complaints in this regard;
  - 9.5. the broadcaster failed to address complaint 2, 3 and 4 and insofar as any of the allegations contained in the response are aimed at addressing those complaints (which is denied), such attempts must fail for the reasons set out above.
10. In the circumstances and as stated above, our clients persist with the complaints and request the relief sought in our correspondence dated 3 April 2019.”

## EVALUATION

[5] After going through all the substantive and comprehensive submissions including all video clips to assist in the finalization of the matter, it is safe to point out that this particular dispute is primarily founded by the story of resurrection of a man at the Complainant's premises in Sandton. The so-called miracle took place on the 24<sup>th</sup> of February 2019, was posted on YouTube and has been viewed by the broader society here and abroad. The so-called miracle resurrection brought about four complaints from the Complainant stated in the following terms:

- 5.1 Controversial issues of public importance – Right of reply;  
In terms of the Code the first complaint falls under the ambit of clause 13 (1) and (2) respectively.
- 5.2 Failure to present news truthfully accurately and fairly;  
In terms of the Code the second complaint falls within the ambit of clause 11(1) dealing with News.
- 5.3 Privacy, dignity and reputation;  
In terms of the Code the third complaint falls within the ambit of clause 15(1).
- 5.4 Distorting, exaggerating and misrepresenting the facts.  
In terms of the Code the fourth complaint also falls within the ambit of clause 11(2) dealing with the News.

For the purpose of uniformity, this evaluation will deal with the complaints as per the Complainant's sequence.

[6] It should be noted for the purposes of this evaluation that even though there were various forms of media publications of the so-called miracle resurrection, ranging from YouTube, BBC to the Respondent; the assessment of this matter will only be limited to the contents of the programme – Dubious Religious Practices as broadcasted by the Respondent's Cutting Edge programme on the 12<sup>th</sup> of March

2019. The BCCSA’s scope of evaluation is only limited to complaints against its licensees – and in this instance the Respondent. It should be noted further that in complying with the provisions of the Code, the Tribunal’s evaluation, including the decision thereof will be taken with specific reference only to the applicable clauses of the Code for as long as they are relevant to the complaint.

- [7] As a starting point, and for the purposes of clarity to all parties concerned, it is important to understand the core services provided by the Respondent’s programme – Cutting Edge. The Cutting Edge is an investigative journalism show, here ‘to inform, educate, empower and uplift tomorrow’s nation’. It presents realities of life as they present themselves from corruption, health, education, labour, politics, arts and culture and sports. The Cutting Edge team is out there to report the story behind the story of the day telling it like it is. At the time when the South African media is divided along racial and political lines, Cutting Edge says:

*Our first obligation is to tell the truth and our first loyalty is to African citizens’<sup>1</sup>.*

The Dubious Religious Practices entailed a thorough investigation of various concerning religious practices within South Africa, and that entailed:

- 7.1 Interviewing and soliciting variety of religious authorities and leaders’ opinions regarding ‘dubious religious practices’ in South Africa;
- 7.2 Broadcasting scenes of people eating grass as another form of dubious religious practice from Pastor Lesego Daniel’s church;
- 7.3 Broadcasting scenes of people drinking petrol as another form of dubious religious practices from Pastor Lesego Daniel’s church;

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<sup>1</sup> [www.sabc1.co.za](http://www.sabc1.co.za) | Cutting Edge

- 7.4 Broadcasting scenes of people eating snakes, as another form of dubious religious practices from Pastor Penuel Mnguni's church; and but not limited to;
- 7.5 Broadcasting the very core foundation of this complaint – the so-called miracle resurrection of a man ['Mr Elliot Moyo'] by the Complainant as another form of dubious religious practice.

It is thus clear that Dubious Religious Practices is a documentary and a product of investigative journalism which entails the primary objective of Cutting Edge, and not a news segment and thus precludes this Tribunal from applying the provisions of Clauses 11(1) and (2) of the Code of Conduct as might have been the Complainant's understanding. In **Case No: 15/2015, Madibeng Local Municipality v MNet** the tribunal was faced with a similar task of classifying the nature of services provided by Carte Blanche, and referred to **Case No: 47/2006, Mxit Lifestyle (Pty) Ltd v Electronic Media Network**, whereby the tribunal had to reiterate the objective behind the core services of Carte Blanche. The tribunal held that Carte Blanche was not a news programme "as traditionally conceived and perceived" and was therefore not subject to the clauses in the Code regulating the reportage of "news". Thus this Tribunal will not be dealing with complaints number two (5.2) and four (5.4) respectively as the latter matter cannot be classified as news segment.

- [7] The second complaint - Clauses 13(1) and (2) of the Code of Conduct respectively. The Complainant in its complaint submitted that in cases of controversial issues, allegations and criticisms of public importance, the Respondent was obligated to afford the Complainant a right of reply on the same programme, but failed to do so. In applying the provisions of Clause 13(1) of the Code, it is imperative that we firstly establish if the current matter qualifies to be termed, 'controversial issue of public importance' with specific reference to the Complainant. The service pertaining to the resurrection of a man and thus the basis of this complaint was publicized by the Complainant on various social

media platforms as of the 24<sup>th</sup> of February 2019. Within hours it had attracted a variety of reactions from social media consumers, to the extent that Twitter users even posted their own dramatic versions of the resurrection. There had not only been social media uproar, but the various media houses broadcasted the latter as part of their news segments as soon as they became aware of it. Various newspapers [EWN, France24, Malawi24, Bulawayo24, H-Metro, Times Live, Daily Sun, BBC News *et al*] also took interest, wrote and broadcasted the story within their jurisdictions; thus attracting huge publicity.

- [8] Cambridge English Dictionary describes the term ‘controversial’ to mean something which is likely to cause disagreement among the members of the society. All the media interest sparked by the resurrection story was initiated about two weeks before the Respondent could even broadcast the Dubious Religious Practices. The latter brought about differing opinions about the story from various stakeholders to the extent that it is safe to term the occurrence as indeed a controversial issue of public interest. By its own admission, the Complainant stated on its media briefing documentation dated the 27<sup>th</sup> of February 2019 that:

*‘Alleluia Ministries and its head Pastor, Pastor Alp Lukau, have over the last few days been subjected to what can only be described as an unwarranted and sustained attack fuelled by bias, speculation and, as will be demonstrated... a blatant refusal to accept certain irrefutable facts.’*

- [9] If we have to focus on all the media uproar brought about by the Respondent’s programme two weeks after the YouTube resurrection story by the Complainant, it is indeed noteworthy that the resurrection story caught the attention of a healthy variety of the civil society – ranging from Elliot Moyo’s neighbours, Elliot Moyo’s former employer Mr. Vincent Amoretti, Elliot Moyo’s friends; various denominations heads – Pastor Musa Sono from Grace Bible Church, Bishop Malusi Mpumlwana the General Secretary of the South African Council of

Churches; to the CRL Rights Commission, the very authority that has been gravely concerned at the magnitude of dubious religious practices within South Africa.

[10] The imperative part of Clauses 13(1) and (2) is that once it has been established that the matter indeed qualifies to be a controversial issue of public importance, the implicated party must be afforded an opportunity to reply to the stated criticisms. It goes on to state that such opportunity must be on the same programme or any subsequent programme forming part of the same programme; including any pre-arranged programme with the prior consent of the Complainant. This is the obligation which falls squarely upon the Respondent, such that the Respondent must make reasonable efforts to fairly present opposing views. From the contents of various documentations submitted to the Tribunal including the audio telephone conversation recordings between the Respondent's Mr. Maagekgetla Mohlabe [*hereinafter referred to 'Maage'*] and the Complainant's spokesperson, Ms. Buli Gama [*hereinafter referred to as 'Ms Gama'*], the Respondent being the broadcaster of the Dubious Religious Practices took the following initiatives in trying to afford the Complainant the right of reply:

10.1 On the 25<sup>th</sup> of February 2019 the follow up call to Ms. Gama was placed by Maage.

- (a) From the call, it became clear that Maage was trying to make face to face meeting arrangements with Ms Gama;
- (b) After being notified of Ms. Gama's busy schedule, Maage went on and enquired if any other person, including the Pastor could be contacted [as the alternative correspondent];
- (c) Ms. Gama totally shot down the proposal, and she reiterated that she was the only contact personnel with whom the Respondent could communicate; and
- (d) By the close of the conversation, both parties agreed that Maage will call Ms. Gama on the 26<sup>th</sup> of February 2019.

10.2 The following day, the morning of the 26<sup>th</sup> of February 2019, Maage made another follow-up call to Ms. Gama as promised and agreed upon:

- (a) Maage called Ms. Gama and she demanded that she needed to be called at a specified time [between an hour and 90 minutes] before an interview;
- (b) Ms. Gama then stated that she can only hold a meeting with Maage at the Complainant's premises;
- (c) Maage stated that he has been trying to get hold of Ms. Gama; Ms. Gama also stressed that she has been on phone calls with journalists the whole time;
- (d) Arrangements to meet in Sandton around 14:30 once more was made; and
- (e) Maage stressed that it didn't matter who would be part of the interview panel 'As long as we can get the interview'.

10.3 Later on the 26<sup>th</sup> of February 2019, Maage made a call and at the time he was already in Sandton. Ms. Gama then referred him to a certain Pastor Rochelle, after stating that she got delayed somewhere.

- (a) Ms. Gama further relayed to Maage that she has been advised by the Complainant's legal team to cancel the interview with the SABC;
- (b) Then Maage tried to notify Ms. Gama of his deadline, and Ms. Gama showed a lack interest of the latter;
- (c) Maage once more enquired as to whether the Complainant's legal team can be contacted on the latter;
- (d) Notably Maage is quoted saying once more:  
*'We want to give you the right of response'*
- (e) Then Maage went on to state:

*‘...so you are giving us a go ahead...to go with the story, without your response at this stage until you hear from your legal team’*

10.4 After been given a green light to go ahead with the broadcast, Maage then enquired as to when the legal team will issue out the statement for their perusal, to which Ms. Gama stated that she doesn’t know; Ms. Gama promised to share the document with the SABC once it was available.

[11] On the 7<sup>th</sup> of March it appeared that there were new allegations against the Complainant and Maage once more solicited a right of reply from Ms. Gama. The latter related to both Mr. Blessing Kwemelao and Ms. Revesai’s allegations that they were paid to fake ‘miracles’ for the Complainant. Further that there was a need to clarify the Complainant’s denial that he didn’t know the family of the man whom he had resurrected on the 24<sup>th</sup> of February 2019. Ms. Gama reiterated her position that she stands by everything stated by the Complainant and thus didn’t have anything further to say. That was the end of the conversations.

[12] Clause 13 (1) and (2) have a stern expectation from the Respondent to take all reasonable measures in making sure that when broadcasting material where the Complainants’ views or doings are criticized, the Complainant is afforded an opportunity to state their opposing views and or right of reply within the same programme. From the recordings, it became rather clear that the Respondent indeed took reasonable measures to ensure that the Complainant personally as the head Pastor or through its spokesperson, Ms Gama or even through his legal team was afforded a right of reply. At some stage the Respondent after explaining its intention to afford the Complainant a right to reply, drove to Sandton, waited for Ms. Gama to confirm her arrival from Pretoria – bearing in mind the obligation to comply with the provisions of this clause. In **Case No: 01/2017 - Busch vs M-Net** - The Complainant alleged that the Broadcaster did not make reasonable efforts to fairly present opposing points of view and failed to provide him with the

opportunity to respond to the allegations against him. From the correspondence between the Respondent and the Complainant, it appeared that the Complainant refused to appear on camera and this caused him to miss the opportunity to present his side of the case. He was thus the author of his own misfortune. The Tribunal found that the Respondent made reasonable effort to fairly present Complainant's version of the facts even though he refused to appear on camera. Taking all that into consideration there was no contravention of the Code by the Respondent

[13] Clause 15 (1) of the Code of Conduct:

‘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’.

Besides the media coverage, starting from the YouTube including various broadcasting houses, here and internationally that took interest in the matter and publicized it; the Complainant was already a well-known public figure within the charismatic church environment. The huge following that the church has as evidenced in various video clips broadcasted, validates how influential the Complainant is. Clause 15 (1) requires the Respondent to exercise exceptional care and concern in matters involving privacy, dignity and the Complainant’s reputation. It goes further to state that the said rights can be overridden by ‘a legitimate private interest’.

[14] According to Jansen and Nel 1998: 300-301<sup>2</sup>, ‘If one has the right to privacy (according to the Bill of Rights), how is it possible to override this right when it is in the public interest? The answer lies in the defences to an action of invasion of privacy that are provided for in law. One such defence is public benefit. As a defence for invasion, it can be used for two groups of people – public figures and

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<sup>2</sup> Media Ethics in the South African Context | The right to privacy | Page 142 | Lucas M Oosthuizen

people who are involved in newsworthy events – whom the media will naturally report on.

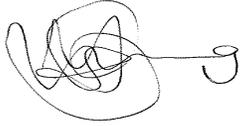
The publication of information about the public figures is justified because:

- (a) They have chosen to go into public life, and they have looked for publicity (agreed to it);
- (b) Their characters and what they are doing have become matters of public interest, and can no longer be considered private; and
- (c) The press has the prerogative (power) and privilege (special right) to inform the public about them.’

As stated in paragraph 13, the breakdown of what entails a public figure including the point upon which their rights to privacy are limited is a very important factor in dealing with this matter. The Complainant chose to post a YouTube video publicizing the acts of miracles within his church, thus seeking publicity; putting his newsworthy actions out there to solicit public interest. It is this very act that aligns with Jansen and Nel’s understanding that once all is out in the public especially by choice, the latter can no longer be considered private.

- [15] In *Case No: 01/2017 - Busch vs M-Net* - the Complainant, a public figure and television personality was portrayed not to be the person he claimed to be... made the allegations that the Broadcaster failed to exercise exceptional care and consideration in matters that involved the dignity and privacy of the Complainant. The Tribunal also found that the Complainant's right to privacy and dignity, being that of a public figure, was overridden by a legitimate public interest.

**All factors considered, the Respondent was found not to have contravened the Code of Conduct, the complaint is thus dismissed on all counts.**

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke ending in a small hook.

**ADV BOITUMELO TLHAKUNG  
BCCSA COMMISSIONER**

*Deputy Chairperson Makeketa and Commissioner Fakude concurred in the above judgment of the Chairperson.*