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**CASE NUMBER: 04/2014**

**DATE OF HEARING: 13 MARCH 2014**  
**JUDGMENT RELEASE DATE: 11 APRIL 2014**

**VAN DER MERWE**

**COMPLAINANT**

**vs**

**RADIO ROSESTAD**

**RESPONDENT**

**TRIBUNAL:**           **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**  
                              **MS G HARPER**  
                              **MS N MAKAULA-NTSEBEZA**  
                              **MR A MELVILLE**  
                              **DR L VENTER**

**FOR THE COMPLAINANT: The Complainant was unable to attend.**

**RESPONDENT: Mr Anton Cloete, Manager of Radio Rosestad.**

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*Religion – relegating Allah to the status of a heathen god – broadcast amounting to hate speech based on religion- fine of R10 000 imposed. Van der Merwe vs Radio Rosestad, Case: 04/2014(BCCSA).*

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## **SUMMARY**

**A member of a panel answering questions relating to religious beliefs, adamantly expressed the view that Allah is equivalent to a heathen god described in the old**

**Testament. Held that it was not permissible to broadcast such a view on air without, at the very least, the presenter stating that the opinion of a Muslim cleric should be sought to discuss the view. Since the view expressed attacked the core of Islam, and was emphasised repeatedly, it amounted to hate speech based on religion.**

**The Complaint was upheld and a fine of R10 000 was imposed.**

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## **JUDGMENT**

**JCW VAN ROOYEN SC**

[1] A complaint was received from a listener regarding a programme on *Radio Rosestad*, a community broadcaster, which broadcasts from Bloemfontein. The complaint concerned a discussion programme where questions relating to religion were answered by a panel, under the supervision of a part-time employee of the radio station.

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

“I would like to lodge a complaint against the radio station Radio Rosestad. There was a show aired today. It is a religious show promoting Christianity. It was aired between 19:00 and 20:00 on this day the 23<sup>rd</sup> of October 2013. On this programme, there was a discussion on Islam. It was more than halfway through the programme. The speakers mocked the way in which Islamic people recite their holy book the Qur’an. The speakers said the reciting the Qur’an is nothing but a “mantra”, and that the Islamic people are nothing but ‘Satanists’. They also said that one of the five pillars of Islam – the expression of faith, is a “mantra” and is therefore “Satanic.”

Now, you have to understand what ‘Satanism’ means in most Christian churches. Satanists are considered the ‘enemy number one’. They are nothing but criminals for many if not most Christians. The speaker also made the claim that God does not like Islamic people because in the scriptures of ancient times the children of “Ismael” (hence all Islamic people according to the speaker) are rejected by God. I find it very discouraging that my favourite radio station calls my Islamic fellow countrymen and women ‘Satanists’ and to mock their reciting of their holy book is very objectionable.

.....<sup>1</sup>.

I feel that this radio station should be more religiously tolerant. This is my complaint. Thank you very much.”

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

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<sup>1</sup> The complainant referred to the name of the Reverend. I removed this, since it is irrelevant for purposes of this complaint. The question is, in any case, whether the radio station contravened the Broadcasting Code and not whether a participant contravened it.

“This is a Religious (Christian) program called “Omgeegroep”. Many Churches in Bloemfontein have gatherings of Christians on Wednesday evenings. We decided to create a program with the same content to broadcast a program with similar content to listeners which cannot attend such gatherings. We also decided not to make use of our own presenters, but use a specialist in this field. We also decided to request ..... to facilitate this program. Although (he) is not one of our presenters, but merely a volunteer preacher/facilitator, we should take responsibility for comments we broadcast. Rosestad is not intolerant of other religious groups and have respect for other cultural groups.

Part of Rosestad's management-system consists of committees. One of our committees is called “Godsdienskomitee” – a committee which deals with religious issues. This complaint is referred to this committee and will be attended to and be placed on the agenda for the next meeting in February 2014. The outcome of the meeting will be communicated to the BCCSA.”

## EVALUATION

[4] The Broadcasting Code in clause 4(2) prohibits hate speech based on religion that constitutes incitement to cause harm. Clause 5, however, excludes certain categories of broadcasts from the reach of clause 4. It provides as follows:

### 5. Exclusions

Clauses 3 and 4 do not apply to:

- (1) a broadcast which, judged within context, amounts to a *bona fide* scientific, documentary, dramatic, artistic or religious broadcast;
- (2) a broadcast which amounts to a discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- (3) a broadcast which amounts to a *bona fide* discussion, argument or opinion on a matter of public interest.

[5] I will first deal with the question as to whether the programme amounted to a *bona fide* discussion on religion. If this was indeed the case, then the question regarding hate speech does not arise. In determining whether material amounts to a *bona fide* discussion, it is clear from the judgment in *Publications Control Board v Central News Agency Ltd*<sup>2</sup> that the bar for any such an exception must not be placed too high. In that matter, the publication *Naked Yoga*, which illustrated different yoga poses by way of nude female photographs, was held by the Appellate Division of the

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<sup>2</sup> 1977(1) SA 717(A).

Supreme Court to be a “professional publication”, which was exempted from the regulatory powers of the Board. In so far as religion is concerned, Rumpff CJ in *Gallo(Africa) v Publication Control Board*<sup>3</sup> was, however, not prepared to regard the musical recording of the film *Jesus Christ Superstar* as a *bona fide* religious publication. It should be stressed that the test of *bona fides* is an objective one which pertains to the nature of the programme and is not dependent on the subjective view of the persons taking part in the programme.

- [6] The presenter had two guests in the studio during a live broadcast. I shall refer to the guests as participants. The problem with the programme under discussion is that it lacks objectivity, its arguments are extremely simplistic, its interpretations of Islam are clearly incorrect, and the conclusions drawn are grossly distorted and even dangerous in the manner that they set up a clear opposition between Christianity and Islam, which is characterised as militant throughout the discussion. While its broader context is claimed to be religious attacks that have taken place in Kenya, the entire programme is clearly aimed at criticising and even condemning Islam (and later also “New Age” religions). The criticism levelled at Islam is severe, and goes to the core of the beliefs of Muslims. The broadcast sets up a simplistic opposition between Christianity and Islam, the latter being characterised as the “antithesis” or antichrist.<sup>4</sup> Allah is demoted to the level of a heathen god, with one participant conceding that he is being “naughty” or mischievous in making this claim. While the participant does quote from the Old Testament in support of his views about Islam, his conclusions are so radical that the presenter should have questioned these. Alternatively, the presenter should have postponed the matter and invited a Muslim cleric to explain or at least debate the issue. Our conclusion is, accordingly, that, although the participant was obviously sincere in his belief, his admission that he was being mischievous, as well as the radical nature of his view, should have resulted in an intervention by the presenter, with the debate being postponed until a later date when a Muslim cleric could participate in the debate.

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<sup>3</sup> 1975(3) SA 665(A).

<sup>4</sup> Whilst it is not our task to become involved in the debate, it is surprising that a panellist refers to Thomas Aquinas (1225-1274) when discussing the interplay between thesis, antithesis and synthesis, whilst this doctrine is usually attributed to Hegel (1770-1831).

- [7] One participant misinterprets Islam’s call to prayer (the *Adhan*), confusing it with a “mantra” normally associated with Hinduism and Buddhism. He equates the call to prayer with brainwashing, even invoking Hitler in this regard. A participant also pokes fun at the *Adhan*, the Muslim call to prayer, by attempting to, laughingly, imitate the sounds – as pointed out by the Complainant – thereby effectively ridiculing the call to prayer. There is even a mistranslation of the words that form part of the call to prayer, with a snide interpretation of the words as a futile attempt to interfere with the movement of the planets by preventing the sun from setting. This compounds the ridicule, and adds to our finding that the discussion was not a *bona fide* discussion on religion.
- [8] Finally, it should be borne in mind that, had a participant expressed his views from the pulpit in his church or congregation, this would have been permissible or, at least tolerable. However, he found himself in a public domain – the airwaves – where there are definite limits to what an individual may say. The views expressed amounted to more than merely stating a view. The opinion was escalated to a severe attack against the Muslim faith. Ultimately, the broadcast was propagating/advocating a view which, to adherents of the Islamic faith, is an outrageous one, and amounts to incitement to cause harm to Muslims, in the sense that the opinion attacks the very foundation of their faith. The views expressed serve merely to fuel antagonisms, ultimately condemning Muslims to no afterlife.
- [9] In the result the finding is that the broadcast amounted to hate speech in that it was in contravention of clause 4(2) of the Code.<sup>5</sup> Although I expressed the view during the hearing that, given the clean record of the Respondent, it was unlikely that a fine would be appropriate, the question did subsequently arise as to whether a mere reprimand or even a corrective statement might be appropriate in this case. We have, accordingly, decided to request the Broadcaster and the Complainant to inform us what they propose would be a fitting sanction.

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<sup>5</sup> 4 (2) Broadcasting service licensees must not broadcast material which, judged within context, amounts to...  
(c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.

[10] The Respondent argued in extenuation that this had been its first contravention of the Code and that it would broadcast a corrective statement. Furthermore, that it would provide training to its presenters. The Complainant submitted that the contravention was serious and that it justified a fine of R5000.

[11] The contravention was a serious one, as appears from the judgment. Religion is an extremely sensitive subject and the demeaning nature of the comments and arguments by the panel, certainly justifies a sanction which should be borne in mind by the Respondent. To a certain extent the one participant acknowledged that he was moving into an extremely sensitive terrain. The inference is that he foresaw the possibility that his comments went against what is acceptable within the broadcasting sphere – a sphere, which belongs to the public and not only to a section of the community – in this case, Christians. The fact that this is the Respondent’s first contravention and that it would take steps to ensure that this kind of contravention would not take place again are, indeed, extenuating in so far as sanction is concerned. The maximum fine is R60 000. We have decided that in the circumstances a fine of R10000<sup>6</sup> would be appropriate. The Respondent is permitted to pay the fine in two installments: the first of R5000 at end April and the second R5000 at end May 2014.

**The complaint is upheld and the Respondent is directed to pay a fine as indicated above.**



**JCW VAN ROOYEN SC  
CHAIRPERSON**

*Commissioners Harper, Makaula-Ntsebeza, Melville and Venter concurred with the judgment of the Chairperson.*

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<sup>6</sup> Plus VAT.