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**CASE NUMBER: 05/2013**

**DATE OF HEARING: 21 FEBRUARY 2013**  
**JUDGMENT RELEASE DATE: 06 MARCH 2013**

**MABASA**

**COMPLAINANT**

**vs**

**SABC3**

**RESPONDENT**

**TRIBUNAL:**           **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**  
                              **PROF HP VILJOEN**  
                              **DR L GILFILLAN**  
                              **MR BRIAN MAKEKETA**

**FOR THE COMPLAINANT: Not present.**

**RESPONDENT: Mr Fakir Hassen, Manager: Broadcast Compliance, Policy and Regulatory Affairs accompanied by Ms Veronica Barnard: Compliance Officer, Mr Siviwe Kakaza: News and Current Affairs, Ms Elna Goosen: Manager: SABC2 and Mr Sonny Khaole: Quality Controller, SABC2.**

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*News – advisories during news – not relevant to images of snakes – it is a requirement of the clause that there must be scenes of destruction, accidents or sexual violence, which was not the case during the news item complained of – Mabasa vs SABC3, Case: 05/2013.(BCCSA)*

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## **SUMMARY**

**Clause 11(9) of the Broadcasting Code for Free-to-Air Broadcasters provides as follows:**

- (9) Broadcasting service licensees must not include explicit or graphic language related to news of destruction, accidents or sexual violence which could disturb**

**children or sensitive audiences, except where it is in the public interest to include such material.**

**A complaint relating to the explicit showing of snakes, kept as house pets, during the 19:00 news, was not upheld, since the scenes did not fall within the ambit of the above clause.**

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## **JUDGMENT**

**JCW van Rooyen SC**

[1] A complaint was received from a viewer of the 19:00 news on SABC3. I referred the matter to a Tribunal for a hearing and a decision on the matter.

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

"I would like to lodge a complaint about SABC 3 news @19h00 broadcasted on the 24<sup>th</sup> January 2013. They showed pet snakes that belonged to the girl in Soweto without warning sensitive viewers. There are people like myself who has serious phobia for such things and believe it was reckless of SABC 3 not to give the warning. I had to quickly walk away from the TV and only listened to the rest of the news which is unfair because if I wanted to listen to the news I would have tuned in the radio. I believe SABC 3 must apologize and ensure that in future there are warnings for such images."

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

**"BCCSA COMPLAINT: HLAMALANI MABASA – SABC NEWS – NO WARNINGS – 24.01.13; 19:00**

1. The news item in question was about a young Soweto school girl keeping snakes as pets. The reason for SABC News to broadcast this story is purely because it is not common for snakes to be found in Soweto and African people are certainly less tolerant of snakes.
2. The News insert did not have an on-screen advisory as pointed out by the complainant. However, there were constant references to the subject of snakes before an actual footage of the snakes were shown.
3. Freedom of expression and information has been held by the BCCSA and the Constitutional Court to include the right to publish even offensive material, obviously within the limits of section 36 of the Constitution, which requires that the exercise of fundamental rights is limited by what is reasonable in a free and open democracy.

We submit that there has been no contravention of the BCCSA Code."

## **Evaluation**

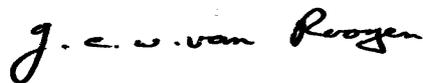
[4] Clause 11(9) of the Broadcasting Code for Free-to-Air Broadcasters provides as follows:

(9) Broadcasting service licensees must not include explicit or graphic language related to news of destruction, accidents or sexual violence which could disturb children or sensitive audiences, except where it is in the public interest to include such material.

[5] As appears from the above, the clause does not refer to images. This is an obvious drafting error and may be rectified.<sup>1</sup> If it were the case that graphic language was a problem, then, certainly, graphic images would also fall foul of the sub-clause.

[6] The images complained about relate to snakes that are kept as house pets. Images of the snakes are shown at long and short range on several occasions during the news item. The only word in the relevant clause which might possibly be applicable to the present facts is “destruction”. Even though, in one instance, the viewer can see that a snake has what appears to be a mouse in its mouth, this could hardly be regarded as “destruction” as understood in the clause. In the result we have come to the conclusion that the news item did not fall foul of clause 11(9).

**The complaint is, accordingly, not upheld.**



**JCW VAN ROOYEN SC  
CHAIRPERSON**

*Commissioners, Gilfillan, Makeketa and Viljoen concurred with the judgment of the Chairperson.*

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<sup>1</sup>Compare *S v Mpofo* 1979(2) SA 255(R) at 257 and *In re Duma* 1983(4) SA 469(N) at 479 In regard to printing errors in legislation.