DATE OF HEARING: 23 JULY 2015
JUDGMENT RELEASE DATE: 04 AUGUST 2015

CHURR vs eNCA

COMPLAINANT
RESPONDENT

TRIBUNAL:
PROF HENNING VILJOEN (ACTING CHAIRPERSON)
DR LINDA VENTER
MS ZENOBIA AFRICA (CO-OPTED COMMISSIONER)

THE COMPLAINANT: Mr Churr in person.

FOR THE RESPONDENT: Mr Ben Said, Group News Editor accompanied by Mr Morapedi Pilane: Assistant Compliance Officer.

News feature broadcast on taxi violence in Northern KwaZulu-Natal - various people being interviewed, inter alia an unnamed independent researcher who puts the blame for the violence squarely on the private security industry - no representative of the private security industry is being interviewed so as to present a balanced view of the problem - such failure amounts to contravention of Clause 28(3) of the Code for Subscription Broadcasting Licensees and Broadcaster is reprimanded - Churr vs eNCA, Case No: 11/2015(BCCSA)

SUMMARY

A news feature was broadcast on the eNCA channel on taxi violence in Northern KwaZulu-Natal. Various people were interviewed: representatives of taxi associations, commuters, a spokesperson for the MEC for Safety, a representative for Santago and also an unnamed independent researcher. The last mentioned person put the blame for the violence squarely on the private security industry but no representative of the
private security industry was interviewed so as to present a balanced view of the problem. This failure amounts to a contravention of Clause 28(3) of the Code for Subscription Broadcasting Licensees and the Broadcaster is reprimanded.

JUDGMENT

HP VILJOEN

[1] eNCA is a news channel that broadcasts news bulletins and news features. On 9 February 2015 a news feature was broadcast on problems relating to taxi violence in the Northern part of the province of KwaZulu-Natal. This broadcast upset the Complainant who lodged a complaint which he describes as twofold, namely against "eNCA news broadcast full editorial team" and against what the "independent expert researcher" had to say (on the programme). It should be pointed out that our jurisdiction does not encompass the staff of broadcasters - only the broadcaster itself; in this case eNCA.

[2] The complaint reads as follows:

"eNCA TV news channel 403 investigative report regarding taxi violence in Durban was aired at least twice on Monday 9 February 2015.

The report was informative and is meant to inform us to the reasons causing taxi rank violence.
Tax rank owners gave specific reasons causing violence which was not further investigated nor reported upon in the TV news report.

The TV news investigator then interviews an un-known, not introduced person, that states where the taxi operators obtain their firearms from.

According to the un-named source, firearms are from private security companies for a number of stated reasons such as:-

1) Security companies are fly by night, opening and closing on a regular basis.
2) Security companies have access to vast number of firearms, such arms not accounted for.
3) Security companies can act as they like with impunity, indicating that they are lawless.
4) There is no control on security companies fire arms when they close. Thus private security companies are the source of illegal firearms in SA.

The above comments made by the sources is not rue, nor fair nor accurate, and misleading in the extreme.
eNCA TV news to correct their incorrect biased investigative report that ignored reasons why there is taxi rank violence by reporting incorrect source of firearms’

Apart from this, the Complainant expounded his complaint by filing about 23 pages of documents with various references, various e-mails and further supporting documents, _inter alia_ the Firearms Control Act 2000 (60 pages), a UNISA research report of 2004 (47 pages) and the PSIRA Code of Conduct (30 pages). Many of the documents and references have no direct bearing on this broadcast and we did not deem it necessary, for purposes of this judgment, to take these documents into consideration because we considered them irrelevant.

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

_“Complaint re: eNCA news on KZN taxi violence”_

This letter is in response to a complaint by Ludwig Churr. The complaint seems to centre around comments made by Mary De Haas in our story on taxi violence.

eNCA has been asked to respond in terms of Clauses 11, 12 and 13 (1) of the BCCSA code.

We submit that the complainant is wrong and that eNCA has not breached any of the clauses mentioned above. The script, with the “offending” quotes in bold, is attached as Annexure A.

The complainant alleges that Ms De Haas is wrong in saying this and in any case, is a “nobody” in his words.

Our central submission is that the complainant is wrong, for the following reasons:

He seems to believe that the security industry is not involved in taxi conflict at all, is well-regulated, strictly regulated and that there is little to no chance of firearms from security companies reaching criminal elements. We submit that this may be true for our large multinationals – ADT, Chubb, G4S, etc. - but that is certainly NOT true across the industry’s more than 9000 registered security companies. The report does not suggest that all security companies are complicit but makes a specific point about some in Northern KZN.

We are hesitant to quote the complainant’s 2004 Unisa report which is 11 years old but if we must reference it, it simply bolsters our case.

It says: In South Africa there have also been ongoing efforts by the authorities to increase the regulation of the industry but this has met with considerable resistance or reluctance from the private industry. One of the problems has been in defining the parameters of powers that can be delegated to private security officers in any crime prevention policing operations.

The debate has been complicated by the fact that in the last few years the provision of policing and crime prevention by the private sector has and is already occurring even in the absence of any official co-operative and regulatory framework.

This simply solidifies the argument that regulation of the private security industry is an historic problem. So, has this changed? We would argue not and we’re not alone.

Former Police Minister, Nathi Mthethwa, argued exactly the same thing this last year. *(See full report at ANNEXURE B)*
The Private Security Industry Amendment Bill has yet to be signed into law suggesting that the industry remains in part under-regulated. We point to one particular paragraph in Mthethwa’s argument which concedes that firearm regulation IS a problem. It says:

“Because of these facts, the government believes it is in the public’s best interests to ensure that stricter regulations are in place about how security companies conduct themselves. We want to make sure that the companies we trust to look after our private security needs are accountable and responsible. To address this, the government has amended legislation to improve the capacity of the regulatory authority, enhance firearm management, public accountability mechanisms and tighten registration procedures”

So, we have established that there is at best an unevenly regulated security industry in South Africa. We move on then to whether Mary De Haas’s allegations of security company involvement in taxi wars and lax firearm control has any merit.

No less than the MEC for Safety in KZN said the same thing. A report on that from the New Age is attached as ANNEXURE C.

Lastly, we would like to turn to the allegation that Ms De Haas is a “nobody”. To put it bluntly, we are surprised at the level of ignorance over Ms De Haas’s track record.

Far from being a “nobody”, she has been a violence monitor in KZN for 30 years and is still attached to the Violence Monitoring Group at UKZN. She was the pre-eminent voice on violence in KZN from the mid-1980’s, through the Inkatha-ANC-State conflict of the late 80’s to mid-90’s. During the State of Emergency she was close to being the lone voice in KZN helping to uncover the terrible violence perpetrated there. She has continued to monitor violence in KZN until today.

We simply cannot think of a MORE credible voice on this issue. We remember her well as a journalist working in KZN in the early ’90’s but for further evidence, please look no further than this excerpt from an article in The Witness in 2008:

In that decade De Haas was one of the few white people who regularly spent time in the townships. “Anthropology is a really hands-on discipline, you are physically there. You spend hours of time with people and you develop close relationships with them, and it was these relationships that started it all off — I would get phoned and be told ‘warlords are coming to attack us’.”

The PFP set up an unrest monitoring group and De Haas and others familiar with the townships were asked to assist. “They wanted people to help deal with the violence, to gather affidavits.” A formidable amount of information was assembled and then it was suggested it be made accessible. “So I did a summary report in 1988 and from 1989 starting doing regular reports.” These reports have continued ever since and can be found on the website www.violencemonitor.com

In the days before the Internet, reports were sent to the media, to diplomats and to business people. “What was happening in the townships was totally different from what was being reported in the newspapers. The summaries were to say, ‘look, this is the other side of the story and it’s not getting told.”

So what was happening? The Inkatha Freedom Party (IFP) was colluding with the state against the liberation movements. De Haas recalls the protests over Lamontville being incorporated into KwaZulu. “They were protesting against apartheid but the IFP opposed them. You could see police Casspirs going in with Inkatha warlords on board. It was a case of apartheid and its surrogates against the others. It wasn’t just the UDF versus the IFP. It was the UDF against the apartheid state, and the IFP was part of that.”

“No one believed me,” recalls De Haas. She was vindicated by the findings of the Goldstone Commission and, later, the Truth and Reconciliation Commission.
Since her retirement from teaching in 2002 De Haas has continued her research and interventionist work on violence and human rights abuses.

We do not believe that eNCA has breached clauses 11, 12, 13. The report is accurate and fair. Even the regulatory body, the PSIRA recognizes there is a problem. (See ANNEXURE D).

The problem of some unregulated or under-regulated security companies and problems with firearms is accepted as fact by the industry body, PSIRA, the KZN provincial Government, the national Government and credible violence monitors. We do not believe that for this story there was a need to give PSIRA right of reply.

In the result we submit that the complaint is without merit and must be dismissed."

**EVALUATION**

[4] This eNCA news feature was broadcast on subscription broadcasting channel 403. Consequently the BCCSA’s Code of Conduct for Subscription Broadcasting Service Licensees is the applicable Code in this instance. The Registrar of the BCCSA referred this complaint to the Broadcaster with the request to respond in terms of Clauses 11, 12 and 13(1) of the (Free-to-Air) Code. As this programme was broadcast by a subscription broadcasting channel, the correct reference should have been Clauses 28(1), 28(2) and 28(3) of the Code for Subscription Broadcasting Service Licensees. However, as the corresponding clauses of this Code are almost word for word the same as the Free-to-Air Code, this error does not materially affect the response by the Broadcaster or the merits of this case.

[5] By putting this topic of taxi violence on the agenda, as it is entitled to do and even more so, is obliged to inform the public about, the Broadcaster stimulated its viewers to ask questions and to think about this problem. One such viewer was the Complainant who not only thought about the problem, but did his own research on the topic and uncovered some interesting facts. These are all contained in the documents referred to above.

[6] The news feature starts with the announcement: "Efforts to end taxi wars on KwaZulu-Natal's North Coast still appear to be ineffective, despite numerous interventions by government and police". It then continues to quote the National Taxi Council’s estimates that more than 15 taxi bosses have been gunned down during the past 3 years. Some time of the feature is then devoted to the killing of a one year old
baby by suspected hit men and other incidents of violence. Then follows interviews with three spokesmen (all identified on screen) for the two feuding taxi associations of Maphumulo and KwaDukuza. After some more interviews with unidentified taxi commuters, the presenter continues as follows:

"But an independent researcher, who runs a violence monitoring project, says security companies are part of the problem."

A woman appears on screen but no name banner is shown at the bottom of the screen, as with the spokesmen for the taxi associations, and the name of the "independent researcher" is not mentioned by the presenter. The viewer is left in the dark as to who this "independent researcher" is. The following statement by her clearly aroused the interest of the Complainant and caused his distrust in the source of the information:

“In this industry, you get a lot of hit men. And you also get private security companies guarding taxis and they're not particularly kosher themselves. I've come across cases, including up north, where guys are employed by security companies, they're not registered, they've got criminal records. And these people, the security people, have access to huge quantities of guns and the security industry is not very well regulated. You get people operating with impunity. And the easy availability of weapons isn't helping.”

The independent researcher continued with her diatribe against the private security industry as follows:

“Security companies come and go. They kind of get these guns and there's not necessarily any accounting for them when the company changes or closes down. So, those are factors, but all of it, strictly speaking, should be dealt with by the police, just like any other crime. And it's not happening.”

These allegations stimulated the Complainant to do his own research on the topic and this resulted in him discovering that the independent researcher was a certain Mary de Haas. The Complainant then researched her publications and came upon the interesting fact that in the past she blamed the police and politicians for stirring up
violence in the taxi industry, at least as far as Northern KwaZulu-Natal is concerned, and not the private security industry. He alleges that her comments are not true, nor fair, nor accurate, and that they are misleading. He also alleges that the reasons that are given by the various members of the taxi associations are not investigated in the programme.

[10] The Broadcaster responded to this complaint by quoting former Police Minister Nathi Mthethwa and referring to the MEC for Safety in KZN on the same topic. Then the reputation and achievements of Mary de Haas are expounded in detail. The Broadcaster also refers to the problems with "unregulated or under-regulated" security companies and problems with fire arms that are both accepted by the Private Security Industry Regulatory Authority (PSIRA) and the National and Provincial Governments. The Broadcaster denies that the complaint has any merit. As a side issue, the Broadcaster accused the Complainant of referring to Mary de Haas as a "nobody", but during the hearing this issue was settled between the two parties.

[11] The worrying aspect about this broadcast is that the necessary research required for a programme such as this to comply with the Broadcaster's responsibilities in terms of Clauses 28(1), (2) and (3) of the Code, seems to have been done after the broadcast and only once a complaint had been lodged. It is now clear to us who the independent researcher is, what her credentials are and that there are problems in the private security industry that are possibly one of the causes of the taxi violence. We must now consider whether the broadcast might have been in contravention of the Code, and in doing so, look through the eyes of the viewers of the programme at the time of the broadcast, as it were, without the advantage of knowing who the independent researcher is and without the knowledge uncovered by the research after the complaint had been lodged.

[12] Although the programme complained about should be classified as a news programme and should therefore comply with Clause 28(1) of the Code, it is also one in which a controversial issue of public importance was discussed. It should thus comply with the provisions of Clause 28(3). The people whose opinions were aired, apart from the two commuters who were worried about their safety when traveling by taxi, were the three taxi owner members of the different taxi associations (Bhengu, Mhlongo, and
Cele), Mary de Haas, the KZN MEC for Safety spokesperson (Ncalane) and the Santaco KZN spokesperson (Mzelemu). Although the real culprits, according to De Haas, are the private security industry, no representative of the industry, like PSIRA, was given the opportunity to give their opinion on the causes of the violence and the industry's alleged role therein. De Haas also expresses the opinion that all the factors, the unregulated nature of the private security industry which allegedly causes the violence, should be dealt with by the police. However, no spokesperson of the police was on the programme to present the police's side of the story. In our opinion, the average viewer of this programme would go away with the conviction that the private security industry is the main cause of the taxi violence in Northern KwaZulu-Natal (which might or might not be true), but this is contrary to the object of Clause 28(3) of the Code. The object, of course, is for broadcasters to ".... fairly present opposing points of view ..." In this instance we find that this had not been done and accordingly find that the Broadcaster has contravened Clause 28(3) of the Code.

[13] During the hearing the possibility of a contravention of the Code was not put to the representative of the Broadcaster and he has not had the opportunity to present argument in mitigation of sanction. In terms of Clause 14 of the Constitution of the BCCSA a reprimand is the lightest sanction that we can impose for an infringement of the Code and we have decided on this. We do not think that it is to the detriment of the Broadcaster to impose this sanction without first hearing arguments in aggravation and in mitigation of sanction.

[14] Another matter which we have to get off our hearts concerns the long time that it has taken to finalise this complaint. We have been informed by the Registrar of the BCCSA that this complaint was lodged in February 2015 but that the Broadcaster only responded on 19th March. The Complainant was dissatisfied with this response and commented on it. The Registrar then allowed the Broadcaster to react to the comment but on 3 July she had not received the Broadcaster's reaction and she was obliged to arrange for a Tribunal hearing. This matter was only heard on 23 July, some five months after the complaint. The Broadcaster representative apologised for the delay and the apology is accepted, but the Broadcaster is requested to be more meticulous with its responses to complaints in future.
To recap:
We find that with the broadcast of this programme the Broadcaster contravened Clause 28(3) of the Code of Conduct for Subscription Broadcasting Service Licensees. The Complaint is accordingly upheld. The sanction we impose is a reprimand.

HP VILJOEN
ACTING CHAIRPERSON

Commissioner Venter and Co-Opted Commissioner Africa concurred with the judgment of the Chairperson.