CASE NUMBER: 33/2014

DATE OF HEARING: 01 OCTOBER 2014
JUDGMENT RELEASE DATE: 17 OCTOBER 2014

SCHWARTZ

vs

SABC3 (NEWS)

TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
MR BRIAN MAKEKETA
MS Z MBOMBO
MR A MELVILLE

FOR THE COMPLAINANTS: The Complainants could not attend.

RESPONDENT: Mr Fakir Hassen, Manager Broadcasting Compliance, Policy and Regulatory Affairs accompanied by Mr Nyiko Shibambo, Compliance Officer Broadcasting Compliance, Regulatory Affairs.

Commentary – foreign matters – “public importance” as a legal concept – not readily found in regard to reporting on foreign matters – contrasting views on Gaza matter, in any case, included as part of news coverage. Schwartz vs SABC3 (News), Case: 33/2014(BCCSA)

SUMMARY

Complaints that biased and incorrect views were broadcast by the Respondent in regard to the Israel-Gaza conflict were not upheld on the ground that a contrary view by the Israeli Ambassador and a representative from the Jewish Board of Deputies was also broadcast. In any case, where foreign matters are broadcast, the higher level of balance which is required in regard to South African affairs of public importance is not required. Complaints not upheld.
JUDGMENT

JCW VAN ROOYEN SC

[1] Complaints were received in regard to broadcasts concerning the Israel-Gaza conflict. The Registrar decided to entertain the complaints and referred the matter to me. I referred the matter to a hearing by a Tribunal of the Commission.

[2] The first complaint reads as follows:

"I formally wish to lay a complaint against SABC 3 news at 18:30 in regard to their broadcast on 14 and 15 of July 2014.

The SABC TV news broadcast has been weaved with complete untruths and been deceptive, and have given a one sided biased opinion and commentary, which has been designed to portray Israel in a bad light, and the truth has been concealed. In fact the news on the Middle East was propaganda on behalf of the Palestinians.

The evening of the 14th of July, SABC 3 TV at 18:30 interviewed a Professor from University of Johannesburg, a Muslim who said terrible lies like Hamas aren't terrorists. In fact he said that "you know Nelson Mandela was called a terrorist". Hamas are recognised by the UN as a terrorist organisation! Where was the fair comment?

He further said that "he doesn't want to be a conspiracy theorist, but there are those that say that the rockets falling in Israel are only simulated". How dare he say that. That is a blatant lie!

When Peter Ndora asked him couldn't this be stopped by Barak Obama, he said that Obama is a very good man, but the Israel lobby in the US is very strong. How can he be allowed his biased opinion with nobody given the opportunity to counter? In fact the truth is as reported on EWN that Barak Obama has said that "Israel has the right to defend itself and its citizens against these rockets being fired on them", but this has never been even voiced on SABC TV news.

In fact the whole news was one sided. They then spoke about the Muslim teenager that was killed by Three Israelis in an horrific manner (although true, this was already 2 weeks ago & not relevant to what is taking place in the Middle East). This same incident of this boy was again reported on the evening of the 15th of July.

They then showed a poor woman who was fired at by Israelis & what happened. There was no coverage at all about Israel being fired on by Hamas from Gaza, nor was there any comment given or allowed from Israel's side. On the 15th of July, ie the day before yesterday, they reported that "Israel is firing rockets on Palestinians & Gaza after Egypt tried to broker a cease fire which was not accepted". No comment about who had accepted the cease fire, and who hadn't, but the impression was that Israel had not accepted it. THE FACTS ARE THAT ISRAEL HAD ACCEPTED THE CEASE FIRE BUT THIS WAS NEVER REPORTED. The news headlines even began, with Israel still attacking and firing on Gaza and its civilians. What about the fact that Israel gave back Gaza for peace, and in return had missiles fired on them all the time. Israel, factually were reacting and was not the aggressor, but nothing about this was stated. They then went on to the humanitarian crisis, and showed a man saying how Israel fires on them. What about the innocent Israeli citizens of all religions, cultures and creeds who are being fired on from Hamas in Gaza? They also had the call on SA Government to do something for the people in Palestine understand that people have different opinions and viewpoints, but a News channel can put out blatant facts without being biased and untruthful. Comment is also supposed to be fair and this was pure propaganda! A person who
only saw the SABC TV news would think that the whole Middle East debacle was created by Israel, which is not true. Even Al Jezeera offer a truer picture of what is transpiring. Please can you do the necessary to ensure that we have news that is truthful and based on correct facts, with commentary that is fair."

The second complaint is placed in a footnote so as to make this judgment less voluminous.¹

[3] The Broadcaster responded as follows (Responding to both complaints)

1. On both days in question, the impact of the conflict on both Palestinians and Israelis were reflected. The fact that the lead is focussed on the humanitarian impact on civilians was no different to most of the broadcasters including Al-Jazeera, BBC, and CNN.

2. Reference was made to both the Israeli airstrikes as well as the rockets launched from Hamas-run territories on both days in question.

3. The reference to the Israeli youth arrested for the killing of a Palestinian was relevant since the news of their confession to the murder was revealed on 14 of July 2014 by Reuters News agency citing Israeli official sources.

4. It should also be noted that on 15 July 2014, a reference to the confession was contextualised; it was accompanied by reference to the abduction and killing of three Israeli teenagers and the revenge killing of a Palestinian teenager.

5. We did in fact reflect that Israel resumed its airstrikes after an Egyptian brokered ceasefire in response to continued rocket fire from Hamas.

6. We did cover the calls for restraint from world bodies. Similarly we covered the calls on the South African government to take a stand on the conflict. It should be noted that on days following the 15 July 2014, SABC 3 in fact covered the response to these calls from both the Jewish Board of Deputies as well as the Israeli ambassador to South Africa.

¹ 16 July: “Several of the SABC3 news broadcasts on the current Gaza crisis have revealed a definite bias towards the Palestinian cause. Tonight's broadcast at 18:30 excelled in revealing this bias. A disproportionate amount of broadcasting time was given to covering the Palestinian side of the story. The representative from the Jewish Board of Deputies was literally only given a few seconds. Also, the Israeli Ambassador was given a very short interview that was clearly edited to serve a certain purpose. We did not get any images portraying the fact that Hamas has been firing over 900 missiles over the past few days onto Israeli targets despite international calls to not do so (including from the UN). Also not portrayed was the fact that Hamas deliberately uses human shields (explaining the high civilian death count), a matter that international bodies such as the EU have raised concern about. The fact that Israel has accepted cease-fire proposals and Hamas rejected them and continued attacks against Israeli civilians was not reported. Huge coverage was given to South African protests from Islamic quarters but the local Jewish voice was muted. The inevitable result of this biased reporting is that sympathy is cultivated among the uninformed or ill-informed viewers for Hamas (which is a terrorist organisation backed by Iran and part of the Islamic jihad) and the Palestinian cause. This reveals an ideological bias from the side of the SABC that does not constitute objective and responsible journalistic practice. Tonight's (2014-07-17) SABC3 news broadcast has continued its biased reporting. Again the emphasis was on the response of South Africa's Muslim community - no perspective was given from the local Jewish community and none from Israel. No mention was made of the fact that Israel supported the cease-fire to allow for humanitarian aid to reach Gaza and that Hamas violated the cease-fire after only two hours and continued firing rockets at Israeli civilians. No mention was made that Hamas is refusing to negotiate a peace deal. No mention was made of the UN discovery of a large rocket stock found at a Gaza school. No images were given of the consequences of unabated rocket attacks on Israel, only images from Gaza (if at all true - Hamas is known for using footage and images of scenes in Syria to bolster its cause). How can what we have to be subjected to via SABC News ever be considered impartial and professional journalism? Respectfully, my suggestion is that you get a trustworthy and unbiased senior journalist to study the inserts on SABC News about the Gaza affair and to compare them with, let us say the Dutch and Flemish reports. These present the case as it unfolds and do not try to colour the presentation towards one particular side. I would call their approach responsible journalism. Once you do such comparison, you will clearly notice the biased presentation made by SABC News. Not a difficult exercise to undertake.”
7. In respect of the interview with the University of Johannesburg academic, the following should be noted:
8. Professor Farid Esack is from a respected institution the University of Johannesburg – and is considered an expert on the Middle East.
9. The questions posed to him we believe were fair and critical of both Israel and Hamas. The complainant did not take issue with our line of questioning which we would interpret as acknowledgement that they were fair and relevant.
10. A fair and objective evaluation of the interview with Professor Esack will show that it was robust and challenging which is what we strive to do in studio interviews of this nature.
11. The complainant is selective in his criticism of the interview and also economical with the truth. It is our view that the Professor did not seek to defend Hamas and demonise Israel but drew on facts, like the international law and United Nations resolutions to argue his position. In fact he does make reference to Israel’s right to defend itself alongside the right of occupied people to resist.
12. The comment on the US president being a nice guy was in response to a question why is he not intervening in the Middle East. Professor Essack mentioned that the US president is subject to pressure inside his. A reference to a system of lobbying in our view Prof Esack’s reference to it was in no way a slant on Israel.

We submit that there has been no contravention of the Code in either of these complaints.”

EVALUATION

[5] We have no doubt that much more time was given to the Gaza sympathisers in the broadcast. However, the amount of time given is not the test – it is the quality and content which counts and, in both responses, the speakers came to the point in short, meaningful, answers. The Israeli Ambassador and a representative of the South African Jewish Board of Deputies were both granted an opportunity to answer basic questions. What is more, regular viewers of news programmes are likely to be familiar with the situation, as well as the different points of view concerning the matter at hand. It was, accordingly, not necessary to elaborate.

[6] The BCCSA has often stated that in so far as foreign issues are concerned, much leeway is given to broadcasters. This is particularly so since foreign news events are problematic to evaluate in terms of balance. We simply do not know enough concerning the facts to arrive at a rational decision. The facts and opinions, in any case, tend to be based on a variety of perspectives concerning matters of which we do not necessarily have first-hand knowledge. We are also not called upon to go on a hunting expedition in a sense of an inquisition. We simply consider the facts before us and then decide how a reasonable South African viewer might react to the opinions.
broadcast – such a reaction would be based not only on what the viewer sees in the particular broadcast or broadcasts, but may be formed over a period of time. Clause 12 of the Code is, in any case, mainly directed at South African affairs which have a public importance impact in South Africa. When the issues have a direct bearing on South African social or political matters, the balance test is, accordingly, applied much more strictly – although even in this terrain we have held that, since perfect balance is probably an unattainable ideal, the test is applied with circumspection. This is so especially since it is important that, wherever doubt exists, freedom of expression and opinion must be given priority.

[7] In so far as the broadcasts before us are concerned, we are satisfied that the Broadcasting Code has not been contravened. In so far as mistaken views might have been broadcast, we are satisfied that the contrary views were broadcast or that the mistakes would have been questioned by a reasonable viewer or that they would in any case have been approached with circumspection or doubt.

The complaints are not upheld.

JCW VAN ROOYEN SC
CHAIRPERSON

Commissioners Makeketa, Mbombo and Melville concurred with the judgment of the Chairperson.