CASE NUMBER: 02/2006

DATE OF HEARING: 25 JANUARY 2006

MC MATLALA             COMPLAINANT

vs

MOTSWEDING FM           RESPONDENT

TRIBUNAL:  Prof Kobus van Rooyen SC (Chairperson)
           Prof Ravi Nayagar
           Prof Sunette Lotter
           Prof Gerrit Olivier

The Complainant did not attend

For the SABC: Mr Fakir Hassen, Manager Broadcast and Compliance, Policy and Regulatory Affairs of the SABC

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Violence – incitement to – presenter expressing view that community should take action against criminals itself – other sweeping statements about Black people amounting to unfair commentary. MC Matlala vs Motsweding FM, Case No: Case No: 02/2006.

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SUMMARY
The Registrar received a complaint concerning the comments on Motsweding FM encouraging the community to kill a suspect if found. Other sweeping and unfair comments about Black people were also made on the programme. Whilst the presenter might have the opinion that the law should be taken into the hands of the
vigilantes, this is an opinion, which he should keep to himself. That people have often taken the law into their own hands is, sadly, not just a matter of mediaeval record but a real and present danger in our and other societies. It is dangerous when a presenter expresses such an opinion seriously as was the case in the broadcast. This is the kind of statement, which should not even be permitted to reach a limited audience. It amounts to a sanctioning of violence and is in conflict with the Rule of Law, which is a founding value in our Constitution. It also amounts to incitement to imminent violence in terms of clause 16 of the Code. In so far as the demeaning and sweeping statements regarding a corruptive Black people are concerned, the expression of such an opinion is unfair in the extreme. The Tribunal considered whether such an opinion might not be permissible within a freedom of speech dispensation, such as ours. However, the opinion has a bearing on a matter of public importance and may not, according to clause 35 of the Broadcasting Code, be expressed without balancing it by a proper debate, which addresses the subject as a whole and is fairly related to the facts. The complaint is upheld in terms of clauses 14, 16 and 35 of the Broadcasting Code.

JUDGMENT

JCW VAN ROOYEN SC (CHAIRPERSON)

[1] The Registrar received a complaint concerning the comments on Motsweding FM encouraging the community to kill a suspect if found. Further sweeping and unfair comments about Black people were also made on the programme.

[2] The complaint read as follows:

"I would like to bring to your attention my disappointment and embarrassment I was subjected to by one of the SABC radio station Motsweding FM.

On Saturday 8th October 2005 immediately after the 7:00 news read by DJ Mr Boys Mohusiwa, DJ, Mr Peter Manzana, started to comment about a particular incident on the news. Apparently a community was enraged by criminal act that happened in their area, and they were threatening to kill the suspect if they caught him/her; police were asking the community not to take the law into their own hands, but to cooperate with them in solving the matter. To the contrary Mr Manzana encouraged the community to kill the suspect if found. Unfortunately I can’t put everything on paper, as the gentleman’s comments on the day about Africans/blacks weren’t only unfair but degrading insulting and immoral. I hope this matter will be investigated and dealt with the urgency it deserves”

[3] The SABC responded as follows:
“ALLEGED INCITEMENT”

We concede that the opinion expressed by the presenter that he would prefer a suspected child rapist to be rather burnt alive if caught by the community rather than being taken into police custody could be misconstrued by some listeners and apologise for this. However, there was no intent to incite people to take the law into their own hands. The comment was an emotional one made in the context of the child rapist being equated to Satan and therefore deserving to burn in Hell.

“ALLEGED HATE SPEECH”

The range of remarks about Black people being corrupt and engaging in criminal activities were related to the presenter having seen issues raised in the movie Drum, which he had viewed the previous night. Again, we concede that it may be considered unfair to single out Blacks only as being involved in these kinds of activities, and apologise for the offence caused.

[4] The translation into English of the relevant comments reads as follows:

SEVEN O’CLOCK NEWS BULLETIN:

The MEC for Safety Ferroz Cachalia appealed to the people of Eldorado Park not to take the law into their own hands following the abduction by force and murder of a six year old Karondishia Lee. Community leaders say they know the person responsible and they are aiming to take captive the suspect on their own at the end of the week. Sound byte in English by MEC spokes person, Pumla Mthala.

COMMENTS - PART 1

Manzana: The suspect who killed that little girl, Maboezana, they said community should not take law into their own hands. I will be very happy if they can apprehend and scorch the suspect still alive. It looked as if Satan has moved from hell and is living amongst us in South Africa.

Satan is alive and he is living and amongst us daily. I say it will be a bonus if the can scorch him before the police find him as this sickness or practice is recurring.

Boyce: It is recurring

Manzana: It is persistent. Just imagine our children been raped, where should our children go to?

Boyce: They are killing them cruelly. They slit their throats.

Peter: What did a six year old do?

Boyce: (Emphasise) Six year. Yerrr!
PART 2

**Peter:** No man, it does not matter even if they can seize him/her.

**Peter:** “Still water runs dry”/Laughter does not mean friendship I do not trust black’s Maboezana. During the week I watched a film called “Drum”. One of the reasons to watch this film is because majority of actors are South Africans and it is based on our South African history, especially journalists.

**Boyece:** (Amazed) Ehe!

**Peter:** At any rate, they are magazine journalists.

**Boyece:** OK

**Peter:** The olden day Drum magazine. At the end I saw a sensitive issue which made me lose confidence amongst our black people

**Boyece:** Mm!

**Peter:** Our own black people can sell and spy on you. For democracy to take so long, it is not because of the Boers but our people. You know! Boers use the very black people to spy amongst themselves. Did you know that a black person can sell you for R10.00. If a person can ask me “Are you proudly South African” I would reply by saying “Wait! I am going to think about it”

Have I ever told you about an article I read, it is on my computer, unfortunately I cannot print because there are many articles. If I find it I will send it to you. It reads “Blacks do not read” Black people don’t read they just spy only. Man!

They backstab for them to get to the top. For Mandela to spent 27years in prison, it is because he was sold out by black people.

If I see a black person with a person of another race i.e. Coloured, Indian or White, I just think of spying. Jeses! Nee man! A black people are sell-outs and backstabbers and they can kill you.

Have you ever seen the Red ants - they are blacks, and I suspect that the company belongs to a white person. See them when they go to evict people from their flats and throw their belongings (TV) out of windows. You can ask yourself where they are staying, you will find that they are staying at the flats they are destroying. “Jeses man”

Do you know a black person can steal your R200 000.00 car and sell it to whites for R200.00. They will give him R200.00 and he will say “Thank you boss”. He will go the white person and say “Boss, I’ve got a parcel” and they are afraid of white that is why whites taking us for granted

They can steal your expensive car without any conscience which you worked hard at SABC for 30 years and sell it to a white person and then bribe a black police officer with
R200.00 to destroy the dockets or approach a black magistrate (even though it is not all of them), to withdraw the case, and because of money they will do that.

**Boyce:** They (court) will claim that there is no enough evidence.

**Peter:** Not enough evidence. Hei! a black person! This is one of the reasons why many people disagree that Scorpions should merge with the police because Scorpions investigates corruption. Because we know that there is corruption in the police force how can they merge with such people.

**Boyce:** Because Scorpions will have to expose them.

**Peter:** That is why they are eager to take them under their wing because they are afraid of exposure.

We will see what happens but a black person can sell you out

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[5] The relevant clauses of the Broadcasting Code are 14, 16, 17 and 35:

**Clause 14:** “Licensees shall not broadcast any material which judged within context... sanctions, promotes or glamorizes violence.”

**Clause 16:** *Violence and Hate Speech against specific groups*

16.1 “Licensees shall not broadcast material which, judged within context sanctions, promotes or glamorizes violence based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

16.2 Licensees are reminded generally of the possible dangers of some people imitating violence details of which they see, hear or read about.

16.3 Licensees shall not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”

**Clause 17:** The abovementioned prohibitions shall not apply to –

(i) *a bona fide* scientific, documentary, dramatic, artistic, or religious broadcast, which judged within context, is of such nature;

(ii) broadcasts which amount to discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or

(iii) broadcasts which amounts to a bona fide discussion, argument or opinion on a matter of public interest.
Comment

35.1 Licensees shall be entitled to broadcast comment on and criticism of any actions or events of public importance.

35.2 Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

[6] Whilst the presenter might have the opinion that the law should be taken into the hands of vigilantes or the masses, this is an opinion which he should keep to himself. That people have often taken the law into their own hands is, sadly, not only a matter of mediaeval record but a real and present danger in our and other societies. It is particularly dangerous when a presenter expresses such an opinion. Of course, not all listeners would have agreed with what he said, but this kind of statement furthers a climate of violence. This is the kind of statement which should not even be permitted to reach a limited audience. It amounts to a sanctioning of violence and is in conflict with the Rule of Law, which is a founding value in our Constitution. The remarks also amount to the incitement to imminent violence in terms of clause 16 of the Code. That the incitement is directed at “imminent violence” is also clear; the event to which the remarks refer had a bearing on a suspect which was to be arrested soon. Clause 17 does not save the remarks: this is no bona fide discussion but inflammatory speech and is like falsely crying “fire!” in an overcrowded cinema.

[7] In so far as the demeaning and sweeping statements regarding Black people are concerned, the one-sided, sweeping expression of such an opinion is unfair in the extreme. The Tribunal considered whether such an opinion might not be permissible within a freedom of speech dispensation, such as ours. However, the opinion has a bearing on a matter of public importance and may not, according to clause 35 of the Broadcasting Code, be expressed without balancing it by a proper
debate which addresses the subject as a whole and is based on or fairly related to the facts.

[8] The complaint is upheld in terms of clauses 13, 16 and 35 of the Code. As to sanction the SABC argued as follows:

“Given that the SABC has conceded that the statements made in the programme were not acceptable within the Editorial Policies of the SABC and the Code; the SABC initiated appropriate internal disciplinary measures following the incident in question, including the suspension of the presenter pending the result of the BCCSA decision on the matter; we believe that a reprimand would be in order, rather than a fine.”

[9] Whilst the Tribunal has the greatest respect for the standards applied internally by the SABC, full understanding for the large number of employees whom it must take responsibility for and it is true that the SABC executive would never have approved of the remarks made, it is absolutely necessary to objectively demonstrate the seriousness of the contraventions, especially the contravention which deals with the incitement to violence. The internal steps taken by the SABC are taken into consideration in mitigation. A fine of R10 000 is imposed as to the incitement complaint. In the second instance a reprimand would suffice.

JCW VAN ROOYEN SC
CHAIRPERSON

9 February 2006
Commissioners Lötter, Nayagar and Olivier concurred in the judgment of the Chairperson