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**CASE NUMBER: 07/2007**

**DATE OF HEARING: 12 APRIL 2007**

**T MSIBI**

**COMPLAINANT**

**vs**

**SABC2 ZULU NEWS**

**RESPONDENT**

**TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)  
PROF HENNING VILJOEN  
MS REFILOE MOKOENA-MSIZA**

**Complainant: The Complainant did not attend**

**Respondent: Mr Fakir Hassen, Manager, Broadcast and Compliance, accompanied by Mr Amrit Manga, Head of TV News and Mr Bongani Gamede, Zulu Desk Executive Producer.**

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*Dignity – protection of dignity of Gays – newsreader amending news script and using derogatory term for Gays when announcing Parliament’s decision that Gays would be permitted to marry – contravention of Broadcasting Code. Msibi vs SABC2 Zulu News Case No: 07/2007.*

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## **SUMMARY**

**A complaint was received concerning the use of a derogatory term for Gays by a news reader of the Zulu news on the 18<sup>th</sup> February 2007. The Registrar decided to entertain the complaint on the basis that it amounted to a prima facie contravention of the Broadcasting Code, in so far as the derogatory term unreasonably invaded**

**the dignity of Gays as a section of the South African populace. The Tribunal held that the use of the term was unacceptable and that it unreasonably invaded the dignity of gays. The broadcaster was reprimanded for the serious contravention of the Broadcasting Code.**

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## JUDGMENT

### JCW VAN ROOYEN SC

[1] A complaint was received concerning the use of a derogatory term for gays by a news reader of the Zulu news on the 18<sup>th</sup> February 2007. The Registrar decided to entertain the complaint on the basis that it amounted to a *prima facie* contravention of the Broadcasting Code, in so far as the derogatory term unreasonably invaded the dignity of Gays as a section of the South African populace.

[2] The complaint reads as follows:

“On Sunday the 18th of February 2007, I was shocked to hear an SABC 1 IsiZulu news reader verbalize a derogatory word used in defining homosexual men. The presenter articulated the word with absolute pride and no resentment what so ever. As an emerging young researcher in issues of social justice, I was not only shocked by the use of such a word, but also amazed by the fact that no apology was made by the SABC before the news concluded nor was there an apology in the days that followed. If our very own national broadcasting corporation does not take heed of our constitution and continues to promulgate oppressive and insulting language, what about the public at large? The word ‘ongqingili’ is a Zulu derogatory word referring to homosexual men. The word is not only derogatory but also is a form of dehumanization. This word can be closely related to the word ‘moffies’. If a reputable institution like the SABC is able to use such a word without any remorse and compunction, then I’m afraid the very notions of equality, human dignity and social justice-the foundations of our constitution- are being undermined. We can therefore not tolerate such behavior in this country, no matter how big an individual is, be it celebrity, government official or even the SABC. I’m writing thus requesting an immediate apology from the SABC and the reporter concerned. We owe it to the gay community to respect them, just as we as heterosexuals would like to be respected. Hoping that my complaint is accordingly considered.”

[3] The SABC responded to this complaint as follows:

“The executive producer in question is, and has always been aware, that our code of ethics and editorial policies are unequivocally intolerant of such derogatory language as that used by the news reader. Our records reflect that the newsreader altered the original script written for him by the Executive Producer. He did so without consultation or authorization. We nevertheless accept

full responsibility for the oversight that occurred in the process. As soon as the transgression was brought to our notice, we immediately instituted disciplinary proceedings against the reader in question. This underlines our complete intolerance of the use of derogatory language on any one of our bulletins.”

- [4] Although the SABC conceded that the Code had been contravened, it remains the task of the Tribunal to ascertain whether the concession is valid in law.
- [5] It is common cause that the Zulu term ‘ongqingili’, comparable to the term “moffie” in Afrikaans, is a derogatory term used for gays. Gay people were often the focus of crude jokes in the pre-1994 Constitution era. There is no doubt that they were a marginalized section of the community, and often had to suffer unfair and false utterances based on incorrect assumptions that gays are, for example, automatically also child molesters - as if heterosexuals were never child molesters. Such discrimination has not entirely been eradicated in all sectors of our community. Section 9 of the Constitution of the Republic of South Africa, as well as its predecessor, the Interim Constitution, explicitly guarantees the protection of sexual orientation against unfair discrimination. The Constitutional Court has also held that legislation and aspects of common law which unfairly discriminate against consensual sexual activity between consenting adult gays is incompatible with our Constitution.<sup>1</sup> This Tribunal has also held that the use of the word “moffie” is generally unacceptable.<sup>2</sup>
- [6] The term amounts to stereotyping, and it unfairly and crudely categorizes persons who are gay by denigrating them and relegating them to the status of being unnatural or queer. The said stereotyping is unfair in that it does not rectify the negative image and attacks the right which Gays have to equality and the right not to be unfairly discriminated against. This right is also protected in clause 35 of the Code. The public airwaves may not be abused for the purpose of unfair discrimination and degradation. It might be said, and it has been argued, that after 10 years of democracy we should be able to laugh at each other and also at ourselves. But broadcasting does not necessarily lead to a laughing of one person

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<sup>1</sup> *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC)

at another who may then laugh back at the one who laughed in the first place, i.e. a healthy laughing “at each other”; instead, it offers the opportunity for the derisive language of one person (the news reader) in his studio at a specific group in his audience, in this case, Gays. The crude joke makes no attempt at rectifying the negative stereotype, but rather strengthens it in a derisive and irresponsible manner. An argument that invokes freedom of expression as a “pillar of democratic society” and as the “heart of democracy” can only be used to excuse the derogatory joke if the joke also informs, or criticizes the negative stereotype. By no stretch of the imagination could the derisive language of the news reader be regarded as having any value in improving the plight of gays.

- [7] The fact that the term was used as part of the news – albeit, as amended by the news reader – is particularly aggravating. If the SABC had not immediately taken steps against the news reader, the Tribunal would have considered imposing a fine. Although the steps which a broadcaster take do not always serve as an extenuating circumstance, the Tribunal believes that the steps taken in the present case are mitigating, in so far the imposition of a fine is concerned.
- [8] The Tribunal has requested SABC2 to provide it with reasons as to why it should not direct it to broadcast the steps taken against the presenter and also the judgment of the BCCSA. Mr. Fakir, for SABC2, argued that it would be against SABC policy to broadcast the disciplinary steps taken against an employee. This is an understandable argument and the Tribunal does not wish to pursue that course. In the circumstances it would seem fair – given the steps taken by the SABC and its approach to this matter before the Tribunal – to limit the sanction to a reprimand. We assume that the judgment will be circulated to news editors at the SABC and that the serious nature of the contravention will be brought to their attention.

**The complaint is upheld and SABC2 is reprimanded for the serious contravention.**

<sup>2</sup> *Gay and Lesbian alliance v 5FM, case 45/2004; Gay and Lesbian Alliance v MNet, Case No: 57/2005*

**JCW VAN ROOYEN SC**  
**CHAIRPERSON**

*Commissioner Viljoen and ad hoc member Refiloe Mokoena-Msiza concurred with the judgment of the Chairperson*