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CASE NUMBER: 11/2010

DATE OF HEARING: 27 MAY 2010

**J MAGEE- FERREIRA
(HIGH PRIEST OF STARWOLVES COVEN)**

COMPLAINANT

vs

SABC2

RESPONDENT

**TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
 DR LINDA VENTER
 MR BRIAN MAKEKETA
 MS MODJADJI NKWANE**

Complainant: The Complainant in person accompanied by Ms L Magee-Ferreira, High Priestess of Starwolves Coven

Respondent: Mr Fakir Hassen: Acting General Manager: Special Projects accompanied by Ms Veronica Barnard, Compliance Officer of the SABC; L Mashego, Quality Controller, E Goosen, Manager: Programme Acceptance of SABC. C Moore Series Producer, M Emmett: Content Producer, D Naidoo: Commissioning Editor of 50/50.

Hate speech – alleged hate speech based on religion – perpetuating negative stereotype in so far as linking witches with evil and harm – complainant concerned that segment may lead to renewed witch persecution – Tribunal finding that broadcasters have freedom of expression – that segment forms part of a bona fide documentary and therefore contains opinions – that it should be quite clear to audience that presenter’s comment was made in a jocular manner and that it was his opinion, which could be considered as having been fair – that comment did not sanction, promote or glamorise violence against Witches – that presenter’s remark does not fulfil requirements to be

classified as advocacy of hatred based on religion or incitement to cause harm – complaint not upheld. Magee-Ferreira vs SABC2, Case No: 11/2010(BCTSA).

SUMMARY

Complaint about segment containing alleged hate speech against Pagan Witches. Complainant concerned that Witches have been negatively stereotyped and that a link between *witches* and *evil* in a popular programme such as *50/50* could lead to renewed witch persecutions and witch hunts.

The Tribunal held that presenters may express opinions as long as they are fair. Judged within context, it is clear that the comment in question was said in a jocular manner, was the presenter's opinion, was not malicious and most probably referred to a different aspect than what the complainant understood and therefore could be considered as having been fair.

Although freedom of expression must be limited when it sanctions, promotes or glamorises violence based on religion, no traces of this could be found in the segment. The segment forms part of a *bona fide* documentary and is therefore exempted from a limitation of the right to freedom of expression. Regarding the question whether the comment might have been experienced as hate speech based on religion, the Tribunal concluded that there was no advocacy of hatred or incitement to cause harm to Pagan Witches. Clearly the segment was not intended to injure, nor was it malicious or *mala fide* and thus cannot be seen to be injurious to Pagan Witches. No contravention of the Code could be found and the complaint was not upheld.

JUDGMENT

DR. H.L. VENTER

- [1] The Registrar of the BCCSA received a complaint regarding an episode of the programme *50/50* that was broadcast by SABC2 on 19 April 2010 at 19:30. The segment was about the unusual behaviour of a wild dog towards a hyena. The first presenter said: *“In the Sepedi culture it is believed that witches use hyenas as taxis. That is why their hindquarters are lower than the front ones...”* The second presenter commented: *“Well, I must say I do not think there is evil intent here”*.
- [2] The complaint reads as follows [sic]:
- “During the Veldfokus segment hyenas were linked to witches (nothing wrong with that), but then mr Engelbrecht commented that the rest of the segment has no evil intentions (“geen bose intensies”) – thus connecting witches with evil and harm. This constitutes direct hate speech toward a constitutionally protected minority in this country – those thousands who self-identify as WITCHES ... I expect a public apology on the next episode of 26 April 2010 from Mr Engelbrecht to all who follow the religion of Witchcraft in South Africa. The South African Pagan Rights Alliance has also been contacted in this regard ... Please see that this matter is addressed as that which it is ... hatespeech toward a legal and peaceful religion through ignorant and malicious connectation.”
- [3] In response to a request from the Chairman of the Tribunal, Mr. Ferreira provided some background information about Paganism, witches, and related concepts. He explained that the word *Paganism* is an umbrella term used to denote a multitude of different paths, traditions or denominations within the Pagan tradition/religion. Mr. Ferreira belongs to the path or tradition called Wicca. Members follow the guidance of their own inner divinity and harm none (including themselves) in whatever they do. Mr. Ferreira calls himself a Witch as all Witches are Pagans, but not all Pagans are Witches. The word *witch* usually causes confusion because of ignorance, misinformation and uninformed personal opinions. The word *pagan* is derived from the Latin term *paganus* meaning a country dweller or villager. However, early Christians referred to anyone who worshipped the old pre-

Christian gods as pagans or heathens. The ancient pagans practised ancient Roman, Greek, Celtic, Teutonic and Egyptian religions, which are all very closely associated with nature. The term *paganism* (with a small *p*) therefore refers to pre-Christian religious belief systems and practices. Paganism (with a capital *P*) refers to the modern renewal and revival of the ancient religious and spiritual practices of pre-Christian peoples. A Pagan is a person who feels a strong connection to nature, who believes Earth and all its creatures to be sacred, and who seeks personal connection with the divine in nature through the celebration of the seasonal and astronomical cycles that govern the Earth, which is seen as the Divine Mother. Such a person undertakes a personal quest for spiritual growth and embraces environmental awareness and conservation. Pagans do not believe in an entity called Satan or the devil, they do not practice human or animal blood sacrifice, and do not even slaughter their own food, as is still common practice amongst African, Judaic and Islamic religious cultures. Although Paganism is a polytheistic (more than one god) religion, Satan is not one of their deities. Pagans worship a multitude of lesser gods, which can be seen as different aspects of the one supreme God.

Modern Paganism (also called Neo-Paganism), has gained both official and academic recognition all over the world and also in South Africa. In South Africa, Pagans are a recognised religious minority. In 2008 the South African Pagan Rights Alliance was confirmed by the state as a religious organisation that may solemnise marriages. Earlier, religious marriages could only be conducted according to Christian, Jewish, Indian or Islamic rites. Since Paganism/Witchcraft is a recognised belief system and religion in South Africa, Witches are accorded all rights, protections and privileges enshrined in the Bill of Rights of the Constitution of South Africa. That a wide meaning may be given to “religion” was recognised in *Hartman v Chairman, Board for Religious Objection* 1987 (1) SA 922 (O). There is no reason why “religion” in section 15 of the Constitution of the Republic should not also be given a wide meaning. That practices associated with religion may be found to be unconstitutional is,

however, also true – see *Prince v President, Cape Law Society, and Others* 2001 (2) SA 388 (CC). There is nothing, from the convincing evidence before the Tribunal, which would justify any such conclusion in regard to any aspect of Modern Paganism.

- [4] The core of Mr. Ferreira’s complaint entails that in South Africa, as in most African and many other countries, the words *witch* and *witchcraft* are usually used to describe evil or criminal practices associated with ritual killings, human mutilations and misfortune in general (illness, ill luck or death). Many Christian and other traditions view the practice of magic, occult ceremonies and alternative conceptions of the divine, as diabolic. Mr. Ferreira is therefore of the opinion that Pagan Witches have been negatively stereotyped. He referred to the fact that every month in South Africa, citizens die as a result of being accused of practising witchcraft, or are driven into ostracized communities where only their most basic needs are met. Such people are deprived of their dignity and human rights and religious prejudice often leads to bloodshed and the loss of human life. His concern is that a link between *witches* and *evil* in a popular programme such as *50/50* could lead to renewed witch persecutions and witch hunts.
- [5] Mr. Hassen, for the broadcaster, assured the Tribunal that the SABC does not discriminate against any religion and is very sensitive with regard to any material that might be objectionable to the different religious communities. He argued that the phrase Mr. Engelbrecht used, namely ‘*Well, I must say I do not think there is evil intent here*’, was said in a jocular manner and could also have referred to the unusual behaviour of the wild dog towards the hyena. He argued that it is quite possible that reasonable viewers would have understood it as such in the context of the programme. The Tribunal agreed with this view.
- [6] The first question that needs to be addressed is broadcasters’ right to freedom of expression as guaranteed by the Constitution. It should be noted that the right to

freedom of expression is not an absolute right and that it may be limited in certain instances. For example, Clause 16.1 of the BCCSA Code states that:

“Licensees shall not broadcast material which, judged within context, sanctions, promotes or glamorizes violence based on religion”

However, the Tribunal is convinced that the segment in question certainly did not sanction, promote or glamorise violence against Pagan Witches and therefore this clause is not applicable.

- [7] Clause 16.3 states that limitation to the right to freedom of expression 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 amount to a bona fide discussion, argument or opinion on a matter of public interest.

The Tribunal believes that the segment complained of forms part of a *bona fide* documentary and is entitled to contain opinions of presenters. Thus the above exemptions apply to it.

- [8] Clause 35.2 of the Broadcasting Code states that: “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.”

In applying this clause to the segment and after careful consideration, the Tribunal believes that it should be quite clear to the audience that the presenter’s comment was his opinion, which was not malicious and most probably referred to a different aspect than what the complainant understood and that it could therefore be considered as having been fair.

[9] According to the complaint, the most important question to be addressed is whether the broadcast might have been experienced as hate speech based on religion. There seems to be a misconception amongst some sectors of South African society about what kind of language should be classified as hate speech. The definition contained in Section 16(1)(c) of the Constitution and Clause 16.3 of the BCCSA Code, provides that the right to freedom of expression does not extend to, inter alia, “(c) *advocacy of hatred that is based on race, ethnicity, gender, or religion, and that constitutes incitement to cause harm*”. The Tribunal concluded that the presenter’s remark does not fulfil the requirements so as to be classified as advocacy of hatred based on religion. Advocacy requires much more than the mere stating of a viewpoint or the use of certain vocabulary. The term *advocacy* implies an element of exhortation, pleading for, supporting or coercion. Likewise, no traces of incitement to cause harm could be found. The word *incite* means to urge or to stir up and it could not be found that the audience was encouraged or stirred up towards committing violence against Witches or to cause them harm in any way. Clearly the comment was not intended to injure, nor was it malicious or *mala fide* and thus cannot be seen as injurious to Pagans.

Taking the context of the segment and all the relevant factors into consideration, the Tribunal is convinced that there has been no contravention of the Code of Conduct.

In the result the complaint is not upheld.

**DR LINDA VENTER
BCCSA COMMISSIONER**

The Chairperson and Commissioners Makeketa and Nkwane concurred in the above judgment of Dr Venter.