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CASE NUMBER: 14/2016

DATE OF HEARING: 08 SEPTEMBER 2014
JUDGMENT RELEASE DATE: 20 SEPTEMBER 2014

**GLEBELANDS HOSTEL COMMUNITY
VIOLENCE VICTIMS (SOUTH DURBAN KZN)**

COMPLAINANTS

vs

MULTICHOICE CHANNEL 404

RESPONDENT

**TRIBUNAL: PROF HP VILJOEN (ACTING CHAIRPERSON)
MS G HARPER
DR N MAKAULA-NTSEBEZA
ADV R SEWLAL**

For the Complainants: Ms Justine Limpitlaw, Legal Consultant and Dr Julie Reid, Project Leader: The Media Policy and Democracy Project, representing the Complainants.

For the Respondent: Mr Bruce Mkhize, Regulatory Compliance Manager.

Complaint that Broadcaster ignored request by Complainants not to disclose the identity of victims of violence in Glebelands community when reporting on press conference - Broadcaster not only ignoring request, although not maliciously, but failing to conceal identities of victims in a following broadcast as well as on its website - complaint settled between the parties and Tribunal requested to settle wording of apology to be broadcast on the Broadcaster's channel - Complainants not requesting a finding of gross negligence on the part of the Broadcaster - Glebelands Hostel Community Violence Victims (South Durban KZN) vs Multichoice Channel 404, Case No: 14/2016(BCCSA).

SUMMARY

A complaint was received that the Broadcaster ignored a request by the Complainants not to disclose the identities of victims of violence in the Glebelands community when reporting on a press conference. Through miscommunication between staff of the Broadcaster the request was ignored. After reminding the Broadcaster of the request the Broadcaster again failed to conceal the identities of the victims in a subsequent broadcast as well as on its website. The complaint was settled between the parties but the Tribunal was requested to settle the wording of the apology to be broadcast on the Broadcaster's channel. Although the Tribunal was of the view that there was gross negligence on the part of the Broadcaster that might have justified the imposition of a heavy sanction, the Complainants requested the Tribunal not to make a finding of gross negligence on the part of the Broadcaster because of the friendly manner in which a settlement was arrived at.

JUDGMENT

PROF HP VILJOEN

- [1] A complaint by Dr Julie Reid, representing the Glebelands hostel community violence victims (South Durban, KZN)(hereafter called Glebelands), was received by the Registrar of the BCCSA. The complaint stemmed from the fact that Glebelands, on 17 April 2016, hosted a press conference but requested the media, when reporting on the conference, not to identify any members of the hostel community because of fear for reprisal. Exposure through the media would pose a security risk to them. It later appeared that the Broadcaster (Channel 404 - ANN7 - on the MultiChoice platform) did broadcast the footage they obtained from the conference, but without heeding the request of Glebelands not to identify any of the members of the community. The same footage was also published on the ANN7 website, again ignoring the request not to disclose the identities of the members of the community.

- [2] After complaining to the Broadcaster about the breach of confidentiality, the Complainants were given to understand that the footage would be removed from the website and that the material would not be broadcast on the ANN7 television news channel again. The Complainants' dismay is understandable when it transpired that, following upon the undertaking mentioned above, the Broadcaster on 21 April, during an in-studio interview about the topic of Glebelands, again broadcast the footage referred to without concealing the identity of the victims of violence. This resulted in the complaint to the BCCSA.
- [3] After giving the background, it must be mentioned that when this matter came before the Tribunal, it had been settled between the Complainants and the Broadcaster. The settlement entailed the broadcasting of an apology by the Broadcaster. The reason why the matter was referred to the Tribunal, despite the fact that the matter had been settled, is that consensus had not yet been reached regarding the wording of the apology to be broadcast. It was left to us, with the concurrence of the parties, to decide on the wording of the apology.
- [4] However, when preparing for the hearing, the members of the Tribunal were concerned that this appeared to be a case where a broadcaster committed gross negligence in exercising its functions and that this called for some sanction apart from an apology to be broadcast. During the hearing another matter was mentioned by Ms Justine Limpitlaw, the legal representative of the Complainants which required our attention and comment. We will come back to this aspect below.
- [5] During the hearing we put it to the representative of the Broadcaster, Mr Bruce Mkhize, that by ignoring the request of Glebelands not to disclose the identities of the victims of violence, for instance by blurring their faces on-screen, and failing to do so on three occasions (on television after the press conference, on the ANN7 website and during the in-studio interview) seemed to be grossly negligent omissions by the Broadcaster. Mr Mkhize conceded that it amounted to gross

negligence but he assured us that the omissions were not as a result of bad faith or with the intention to harm anybody. He ascribed it to the fact that ANN7 was still young in the business and that there was some miscommunication between the staff because the event covered by the journalist (reporter) and the camera person occurred in Durban while the producer of the programme was in Johannesburg.

[6] On the matter of a possible sanction against the Broadcaster for the gross negligence, the Complainant requested us not to impose a fine on the Broadcaster. Because of the seriousness of the negligent omission, which resulted in the lives of the members of the Glebelands community being threatened, a fine would be irrelevant, according to the Complainant. The Complainant assured us that they were pleased with the speed at which the Broadcaster made amends and with the fact that the Broadcaster was prepared to broadcast an apology.

[7] That just left us with the task to get the parties to agree on the wording of the apology. After some discussion, the parties agreed on the following wording:

PUBLIC APOLOGY

ON 18 AND 19 APRIL 2016, IN OUR NEWS BULLETINS, WE REPORTED ABOUT A PRESS CONFERENCE HELD AT GLEBELANDS HOSTEL AT UMLAZI REGARDING POLITICAL VIOLENCE EXPERIENCED BY THE GLEBELANDS HOSTEL RESIDENTS AND THE APPEAL BY THE COMMUNITY TO THE UNITED NATIONS.

THE COMMUNITY HAD REQUESTED THE MEDIA ATTENDING THE PRESS CONFERENCE NOT TO DISCLOSE THE IDENTITIES OF THE COMMUNITY MEMBERS WHO PARTICIPATED IN THE PRESS CONFERENCE FOR FEAR OF THEIR SAFETY AND THE RISK OF REPRISALS. HOWEVER, WE INADVERTENTLY DISCLOSED THE IDENTITIES OF THE COMMUNITY MEMBERS WHO PARTICIPATED IN

THE PRESS CONFERENCE. THIS WAS DUE TO GROSS NEGLIGENCE ON OUR PART.

WE APOLOGISE TO ALL THE MEMBERS OF THE COMMUNITY WHOSE IDENTITIES WERE DISCLOSED IN THE NEWS BULLETIN. WE HAVE NOW TAKEN EXTRA MEASURES TO ENSURE THAT SUCH ERROR DOES NOT RECUR IN FUTURE.

The parties agreed that this apology would be broadcast within 24 hours after receipt of this judgement.

- [8] In paragraph [4] above we referred to a matter that was brought to our attention by the legal representative of the Complainants. She referred us to the *Code of ethics and conduct for South African print and online media* and more specifically to clause 11 of the *Code* which reads:

Confidential and Anonymous Sources

The media shall:

- 11.1. *protect confidential sources of information – the protection of sources is a basic principle in a democratic and free society;*
- 11.2. *avoid the use of anonymous sources unless there is no other way to deal with a story. Care should be taken to corroborate the information; and*
- 11.3. *not publish information that constitutes a breach of confidence, unless the public interest dictates otherwise.*

She also referred us to the following clause in the *Code*:

- 4.5 *Some personal information, such as addresses, may enable others to intrude on the privacy and safety of individuals who are the subject of news coverage. To minimise these risks, the media should only disclose sufficient personal information to identify the persons being reported in the news.*

[9] The point that she made is that there appears to be a lacuna in the BCCSA Code of Conduct for Broadcasting Licensees in that similar duties are not imposed upon broadcasters. As far as we are aware, matters concerning the privacy and dignity of complainants have so far been dealt with by the BCCSA in terms of clause 28.4 of the Code for Subscription Broadcasting Service Licensees (see also clause 15 of the Free-to-Air Code and BCCSA case no. 17/2015). Had this matter not been settled, we would probably have dealt with this complaint in the same manner. The grossly negligent manner in which the staff of the Broadcaster handled the reasonable request of the complainant seems to be more a matter for an internal disciplinary hearing by the Broadcaster in terms of its own Code of Ethics. If the legal representative of the Complainant feels strongly about this alleged lacuna, she is welcome to send a detailed motivation to the Registrar of the BCCSA for discussion at the next BCCSA meeting.

As this complaint has been settled, it is not necessary for this Tribunal to make a finding. The Tribunal expects the Broadcaster (Respondent) to abide by its undertaking to broadcast the apology within 24 hours after receipt of this judgment.



**HP VILJOEN
ACTING CHAIRPERSON**

Commissioners Harper, Makaula-Ntsebeza and Sewlal concurred in the above judgment of the Acting Chairperson.