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CASE NUMBER: 10/2017

DATE OF HEARING: 29 MARCH 2017
JUDGMENT RELEASE DATE: 11 MAY 2017

REBOSIS PROPERTY FUND LTD
MR S NGEBULANA
BILLION GROUP (PTY) LTD

1ST COMPLAINANT
2ND COMPLAINANT
3RD COMPLAINANT

vs

M-NET

RESPONDENT

TRIBUNAL: PROF HENNING VILJOEN (CHAIRPERSON)
PROF SUNETTE LOTTER (DEPUTY CHAIRPERSON)
MR EDWIN NAIDU

FOR THE COMPLAINT: Mr Kenneth Kenneth Oldwage: Counsel accompanied by Ms Nicqui Galaktiou: Director, Ms Megan Ross, Mr Thembelihle Shalalala of Nicqui Galaktiou Inc and Ms S Meyer of Rebosis Property Fund Ltd.

FOR THE RESPONDENT: Dr Dario Milo, Okyerebea Ampofo-Anti of Webber Wentzel Attorneys accompanied by Mr George Mazarakis: Executive Producer, Mr Wynand Grobler: Managing Editor of Carte Blanche and Ms Lara Kantor: General Manager: Regulatory, Multichoice.

Lack of Balance, Clause 28.1 not applicable, Clauses 28.2 and 28.3 not contravened, complaint accordingly not upheld. Rebosis Property Fund Ltd, Ngebulana & Billion Group vs M-Net, Case No: 09/2017 (BCCSA).

SUMMARY

A complaint was lodged against Carte Blanche concerning a broadcast during which it was implied that the complainant was complicit in a corrupt property devaluation scheme allegedly conducted in the Property Evaluation Department of the Johannesburg City Council. While the complainant's response to the situation was read out by the presenter, the complainant was not interviewed on camera and did not

appear on the show. The complainant contended that sec 28.1 of the Code was infringed as the programme lacked balance. Requests afterwards by the complainant for a follow-up report to address the perceived slur on their company were denied. Clause 28.1 is not applicable as that clause refers to news. Carte Blanche complied with both the requirements of Clause 28.2. It was clear that the interviewees expressed their opinions. The facts upon which these opinions were based were mentioned. The focus of the insert was the fraudulent conduct at the Property Evaluation Department of the City of Johannesburg. The complainant was given an option to appear on the programme but they chose to respond by letter. The video on the website falls outside the jurisdiction of the BCCSA and no finding is therefore made on that aspect of the complaint. The complaint is dismissed.

JUDGMENT

PROF S LÖTTER

[1] The Registrar received a complaint against a Carte Blanche insert broadcast on the 13 November 2016 at 19:00, wherein it was implied that the complainant was complicit in a corrupt property devaluation scheme.

[2] **The complaint reads as follows:**

“COMPLAINT AGAINST CARTE BLANCHE, DSTV AND MULTI CHOICE REGARDING 13 NOVEMBER 2016 BROADCAST

1. We act on behalf of Rebosis Property Fund Ltd (“Rebosis”), Mr Sisa Ngebulana (“Mr Ngebulana”) and the Billion Group (Pty) Ltd (“the Billion Group”), collectively referred to hereinafter as “our clients”. Our clients have instructed us to address this complaint to you against Carte Blanche, DSTV and Multi Choice Africa (Pty) Ltd (collectively referred to hereinafter as “Multi Choice”) regarding the Carte Blanche programme that appeared on Sunday, 13 November 2016, relating to Johannesburg Property Rates (“the programme”). For ease of reference:

1.1 a numbered copy of a transcript of the programme is annexed hereto marked “A” (“the transcript”);

1.2 we also refer you to the:

1.2.1 programme accessible through the following link
<http://carteblanche.dstv.com/player/1153874/>; and

1.2.2 image (reflecting the names of Rebosis and the Billion Group together with images of four properties owned by Rebosis) broadcast on the above link appearing under the heading “*Johannesburg Property Rates*” with the caption “*How were several multi-million rand Johannesburg properties...*”. A copy of this page is annexed hereto

marked "B".

2. Our contact details on behalf of our clients appear hereunder.
3.
 - 3.1 The programme was one of the main features of Multi Choice's broadcast lasting 12 minutes and 30 seconds. Numerous unfair and untrue allegations were made against *inter alia* Rebois and the Billion Group.
 - 3.2 In terms of Section 54(1) of the Electronic Communications Act 36 of 2005 (as amended), Multi Choice is obliged - as a broadcasting licensee - to adhere to the Broadcasting Complaints Commission of South Africa's ("the BCCSA") Code of Conduct for subscription broadcasting service licensees ("the Code of Conduct"). In our view Multi Choice has contravened the Code of Conduct for the reasons we deal with more fully hereunder.
 - 3.3 It is common cause that any news/information pertaining to the City of Johannesburg ("CoJ") and property rates and taxes are of public importance for numerous reasons which are not essential to deal with at this stage. Should it however be necessary to expand hereon in due course, we will do so.
 - 3.4 In terms of Article 28 of the Code of Conduct, Multi Choice must - when commenting on matters of public importance regarding a programme that it has produced or commissioned - comply with the relevant articles of the Code of Conduct. It is not our intention to summarise the relevant portions of the Code of Conduct but where necessary we will refer thereto more fully hereunder.
 - 3.5 Multi Choice must comply with Article 28.1 of the Code of Conduct which includes *inter alia*:
 - 3.5.1 reporting news truthfully, accurately and fairly; without intentional or negligent departure from the facts, whether by:
 - 3.5.2 presenting the programme in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by:
 - 3.5.2.1 distortion, exaggeration or misrepresentation;
 - 3.5.2.2 material omissions; or
 - 3.5.2.3 summarisation;
 - 3.5.3 relying on only news that is reasonably true, having reasonable regard to the source of the news, which may be presented as fact, which must be broadcast fairly with reasonable regard to context and importance.
 - 3.6 We also point out Article 28.2.2 of the Code of Conduct which states that "*comment must be an honest expression of opinion and must be presented in such manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.*"
 - 3.7 We record that Multi Choice relied largely on information from anonymous sources/whistle-blowers for the programme; whose statements could have been rebutted and/or verified from documentation publicly available and by interviewing other witnesses. Multi Choice relies on an internal report that to the best of our clients' knowledge has not been verified and which our clients are unaware of. It is not identified who prepared the internal report and whether anyone was provided with an opportunity to comment, explain, or challenge the content thereof. Furthermore, Rebois provided extensive answers to Multi Choice's questions (dealt with more fully hereunder) which were largely ignored by Multi Choice.

BACKGROUND

4. Rebosis and its representatives/agents (collectively referred to hereafter as Rebosis) communicated with Carte Blanche on numerous occasions and in different formats, including written correspondence, telephonic discussions, texts and WhatsApp messages. What appears hereunder from the chronology of events is that Carte Blanche was dilatory in failing to respond to Rebosis but also conveniently, intentionally or negligently omitted information provided to it which would have portrayed a more balanced view in the programme. For the sake of clarity, we record the following:

4.1 On 27 October 2016, Carte Blanche addressed a letter to Rebosis wherein it requested a response thereto by 17h00 on 28 October 2016. The short time frame afforded to Rebosis to respond, considering the detail and length of the questions, was unreasonable, particularly considering that Carte Blanche was in all likelihood investigating the story for some period of time. A copy of the letter is annexed hereto marked "C".

4.2 On 29 October 2016:

4.2.1 at 16h20 Rebosis sent Carte Blanche an email enclosing its response and supporting documentation ("the response"). A copy annexed hereto marked "D1". (Please note that Rebosis incorrectly stated that the fifth property was increased from R0 to R120 000 000.00, but was subsequently informed on 14 November 2016 that it was in fact increased to R58 400 000.00);

4.2.2 Rebosis addressed a text message to Sasha Schwendenwein (on behalf of Carte Blanche) ("Sasha") requesting acknowledgment that she had received the email with Rebosis' response. A transcript of the text message can be provided if necessary.

4.3 On 31 October 2016:

4.3.1 Rebosis telephoned Sasha (due to Carte Blanche's lack of response to confirm whether she had received the email to which she responded in the negative;

4.3.2 at 14h55 Rebosis forwarded the email to Sasha. A copy of the email is annexed hereto marked "E1". Carte Blanche once again failed to respond or acknowledge receipt thereof notwithstanding the urgency and importance of the matter;

4.3.3 at 14h59 Rebosis forwarded the email to Sasha once again. A copy of the email is annexed hereto marked "E2";

4.3.4 at 15h03 Rebosis sent Sasha a WhatsApp to confirm whether she had received the email. A transcript of the WhatsApp message is annexed hereto marked "E3";

4.3.5 at 15h24 Sasha finally addressed an email to Rebosis, after being dilatory in her conduct (representing Carte Blanche), acknowledging receipt of the response and asking a further question. A copy of the email is annexed hereto marked "E4";

4.3.6 Rebosis immediately responded at 15h25 to the above email. A copy of the email is annexed hereto marked "E5". Again, Carte Blanche did not respond demonstrating its total lack of interest in the response from Rebosis.

4.4 On 2 November 2016:

- 4.4.1 at 16h11 Sasha addressed an email to Rebosis with a further enquiry. A copy of the email is annexed hereto marked "F1";
- 4.4.2 again, immediately at 16h21 Rebosis responded thereto, a copy of the email is annexed hereto marked "F2". Thereafter Carte Blanche did not respond and there were no further emails exchanged.

COMPLAINT

- 5. Many of the allegations made against our clients are either false, misleading and/or defamatory. We refer, in particular, to the following:

- 5.1 Ms Mbali Maclare ("Ms Maclare") was identified as the mastermind behind the alleged fraudulent valuations, who allegedly took bribes from people and undervalued their properties. She was linked to four of the properties owned by Rebosis insinuating that Rebosis had acted unlawfully by paying bribes. The programme focused on serious allegations of fraud and Carte Blanche singled out Rebosis.

- 5.2 It is important that we point out that in paragraph 7 of the transcript twenty two properties had allegedly been devalued as set out in the internal report and in paragraph 29 of the transcript, Carte Blanche stated that *"During our investigation we followed the trail of the companies linked to the twenty two properties devalued"*. It is consequently interesting that Carte Blanche makes no mention of the other 18 properties or owners thereof. It is stated in the programme that Carte Blanche followed the trail of the twenty two properties but Rebosis has clearly been the only owner that has been targeted which is demonstrated by Carte Blanche:

- 5.2.1 failing to include Rebosis' explanations which are legitimate and can be verified through public documents; and

- 5.2.2 targeting only Rebosis and no other property owners on the programme.

- 5.3 In paragraph 10 of the transcript, Carte Blanche inflates and exaggerates the amount that the four properties were collectively decreased in value, by stating that *"These four buildings were **devalued by a total of R268 million**, resulting in a loss of **R19 million in rates and taxes owed to the city.**"* when in fact the properties were:

- 5.3.1 initially increased by 284% a collective amount of R384 600 000.00 from R135 072 500.00; and

- 5.3.2 subsequently, after Rebosis pursued objections and appeals, decreased by a collective amount of R74 727 500.00 (which is still an increase of 55%),

resulting in the above statement, made by Carte Blanche, being factually incorrect in terms of (1) the valuation figures reflected, (2) lack of accurate information provided and (3) reference to the amount that was "owed" to the CoJ.

- 5.4 In paragraph 16 of the transcript, the forensic accountant relied on by Carte Blanche, Ms Sharon Sabbach, stated that there was a potential 172 000 properties that could have been manipulated. Carte Blanche chose to rely on **only** four properties owned by Rebosis completely ignoring all other properties and property developers/owners which clearly demonstrates an unbalanced, biased and distorted programme.

- 5.5 In paragraph 42 of the transcript, Carte Blanche made accusations against Ms Maclare - during her ambush interview - that she devalued all four of properties

owned by Rebosis by falsifying the documentation. It was stated in the programme that *"I have documents where signatures were forged and signed by you"*. The alleged falsified documents were not presented to our clients nor were they presented during the programme. Furthermore, no reference is made as to whether Carte Blanche verified that the objections were in fact false.

5.6 In paragraphs 18 – 28 Carte Blanche relies on two anonymous whistle-blowers and focuses on serious allegations of fraud and corruption. In paragraph 29 Carte Blanche goes on to identify the properties owned by Rebosis and again shows images reflecting the names of both Rebosis and the Billion Group.

5.7 In paragraph 30 Carte Blanche states that *"[a]ccording to the report all four buildings have fictitious objection letters, Mbali created the letters for these two..."* whilst broadcasting images of the properties owned by Rebosis.

5.8 Carte Blanche goes on to make further absurd, untrue and sensationalistic allegations regarding the valuations of the properties owned by Rebosis. We do not quote same but refer you to paragraph 31 of the transcript.

5.9 In response to Carte Blanche's questions, Rebosis gave detailed and valid explanations which completely contradict the absurd allegations made by Carte Blanche. Rebosis explained (see annexure D1) that the notices relating to the outcomes of the objections made by Rebosis refer to various individuals, namely:

5.9.1 the notice for Erf 5145 identifies Mr F.P.J Eloff as the municipal valuer thereof. A copy of the notice is annexed hereto marked **"G1"**;

5.9.2 the letter for Erf 4442 from the CoJ is addressed by Ms Adelle de Beer, the secretary of the valuation appeal board. A copy of the notice is annexed hereto marked **"G2"**; and

5.9.3 the letter for Erf 1271 from the CoJ addressed by Ms Adelle de Beer, the secretary of the valuation appeal board. A copy of the notice is annexed hereto marked **"G3"**,

Carte Blanche has failed to confirm, notwithstanding requests from Rebosis, whether Mr Eloff or Ms de Beer were interviewed regarding the aforesaid.

5.10 Rebosis explained in the response that the property values were increased by the CoJ effective 1 July 2013, which is reflected in the table in Rebosis' SENS announcement issued on 15 November 2016, and that these were drastic increases in the property values which were unreasonable and unsubstantiated. A copy of the SENS announcement is annexed hereto marked **"H"**.

5.11 Rebosis duly followed the correct procedures and noted its objections regarding the increased property valuations as follows:

5.11.1 the first objection related to Erf 5145 which was upheld and the property value decreased to R44 700 000.00;

5.11.2 the other two objections were dismissed and Rebosis lodged appeals in compliance with the correct procedure. Both appeals were successful and the valuations were reduced as follows:

5.11.2.1 Erf 1271 decreased to R92 500 000.00; and

5.11.2.2 Erf 4442 decreased to R52 000 000.00;

5.11.3 the objection regarding the last property Erf 4767 pertained to a rezoning issue which property was valued at R20 600 000.00.

6.
 - 6.1 You will note from paragraphs 9 - 11 of the response (annexure D1) that Rebosis informed Carte Blanche that the fifth property was valued at R0 and that it initially did not receive rates and taxes accounts.
 - 6.2 Rebosis subsequently brought this to the CoJ's attention to ensure that the correct rates and taxes were reflected. This is a very important omission which demonstrates the commitment by Rebosis to comply with its stance regarding anti-corruption and acting within the parameters of the law.
 - 6.3 However, Carte Blanche conveniently and significantly omitted this information from the programme, notwithstanding that it was one of the questions posed in Carte Blanche's letter of 27 October 2016.
7. Carte Blanche's reference to Rebosis' involvement in manipulating the valuation amounts of the four properties as stated in the programme, without any valid evidence therefor, is a clear violation of the Code of Conduct. What is highly significant is that:
 - 7.1 the internal report has not been verified or commented on;
 - 7.2 Rebosis' answers were largely ignored. **Rebosis used approximately 472 words in total to respond to Carte Blanche's questions and it is interesting that Carte Blanche only referred to 32 of those words in the programme.** This alone demonstrates Carte Blanche's failure to give Rebosis' version notwithstanding that it addressed questions to it. Carte Blanche's conduct demonstrates that its action in addressing questions to Rebosis was paying lip service and pretending to provide Rebosis with a fair opportunity to respond. The response from Rebosis was ignored and it appears that Carte Blanche was not committed to verifying the truthfulness, accuracy or veracity thereof.
8. In paragraph 32 of the transcript, Carte Blanche stated that *"Rebosis trades as the Billion Group their swanky offices are in Montecasino's Palazzo West Tower and is run by Chief Executive Sisa Ngebulana an Entrepreneurial Tycoon."* Firstly, Carte Blanche has inaccurately linked the Billion Group to Rebosis and wrongly stated that Rebosis trades as the Billion Group. Throughout the programme the Billion Group is referred and linked to Rebosis without justifiable reason to do so considering that it is a separate and independent entity.
9. We further place on record that Carte Blanche has not only targeted Rebosis and the Billion Group but also the Chief Executive Officer, Mr Ngebulana, by identifying him and broadcasting his photo. There is no reasonable explanation or justifiable reason for Carte Blanche to have done this other than to falsely connect him to a story based on fraud and corruption whilst defaming and damaging his good name and reputation. The use of his photo in the programme was unnecessary and purely intended to emphasise the alleged connection between Mr Ngebulana and the corrupt activities addressed in the broadcast. Mr Ngebulana strongly objects to the tactics used by Carte Blanche in this regard.
10. In paragraphs 49 – 51 reference is made to the Hawks and a docket that could in due course be sent to the Specialised Commercial Crimes Court but there is no basis to link our clients to these investigations and the implications created are that the investigation involves our clients. Our clients have never been approached by the Hawks nor have they been approached by any other investigative authorities.
11. The balance of the programme and paragraph 66 of the transcript again refers to criminal charges, in this instance criminal charges being laid by the Mayor at Johannesburg Central Police Station. Carte Blanche does not identify who these charges are against and once again insinuates that our clients are involved; a fact which our clients strongly refute and deny. Carte Blanche failed to identify who is being

investigated.

12.

12.1 Not only is the programme repeated on DSTV, featured on the demand/catch up option, but it has also been published on Carte Blanche's website (as mentioned above) with the cover video image reflecting the names of Rebois and the Billion Group together with images of the four properties owned by Rebois (marked as annexure **B**).

12.2 The introduction on the website states "*How were several multi-million rand Johannesburg properties inexplicably devalued in order to lower rates and taxes? Carte Blanche unravels an internal report alleging fraud totalling almost half a billion rand in the City of Johannesburg's property valuation department...*" Although the heading makes no reference to Rebois or the Billion Group, reflecting their names on the image incorrectly implies that they are involved in the alleged fraud which, without evidence to substantiate the allegations, is defamatory.

12.3 The main feature of the programme was not about Rebois or the Billion Group and therefore there is no logical reason that their names and the images of Rebois' properties are featured on the cover image of the website's video. The use of this image consequently exacerbates the damage to Rebois and the Billion Group including both their stakeholders whilst creating the impression that they are implicated in the alleged fraud and that the programme is mainly directed at them.

13. The programme has been highly damaging to Rebois in that *inter alia* its share price plummeted drastically the day after the programme was aired and immediately after the broadcast numerous stakeholders started contacting our clients regarding same. Our clients have had to engage consultants to do damage control in regard to the continuous harm caused by the false allegations.

14. As stated previously, Carte Blanche has contravened the Code of Conduct in numerous aspects including, but not limited to:

14.1 failing to report news accurately and fairly; and

14.2 failing to present the facts in the correct context and in a fair manner, intentionally and or negligently departing from the facts by:

14.2.1 distortion and misrepresentation; and

14.2.2 material omissions.

15. Carte Blanche relied on anonymous witnesses and whistle-blowers for its information. We would have expected that Carte Blanche would have verified the information and included the facts and correct information provided to it by Rebois, which information is also publicly available.

16.

16.1 During the week after the programme was broadcast our clients requested that Carte Blanche rectify/remedy the harm (to the extent that it was possible considering the damage already caused) by affording them, represented by Mr Ngebulana, a live interview. Carte Blanche refused to afford our clients this opportunity.

16.2 On 18 November 2016, we addressed a letter to Carte Blanche requesting it to remedy/rectify the distorted, damaging and defamatory programme. A copy of the letter is annexed hereto marked "I".

16.3 On 22 November 2016, Webber Wentzel Attorneys responded to the aforesaid letter on behalf of Carte Blanche refusing to make any attempts to remedy/rectify the false allegations. A copy of the letter is annexed hereto marked "J".

17. Considering the ongoing daily harm to our clients caused by Carte Blanche's allegations, which are unfounded, untrue, unsubstantiated, defamatory, distorted and damaging to their reputations, we request that the BCCSA give a ruling to remedy some of the damage caused by the unfair and distorted programme. I suggestions are as follows:

17.1 remove the programme from the internet;

17.2 broadcast at the beginning of a Carte Blanche programme a detailed apology and correction (which wording must be acceptable to us) identifying the way Carte Blanche has transgressed the Code of Conduct whilst explaining its failure to consider relevant information that was available to it and its complete disregard of the answers provided by Rebosis, we rely on article 28.1.5 of the Code of Conduct in this regard.

18. Our clients are willing to accept an opportunity to give their version in a subsequent broadcast by Carte Blanche, but only if the programme only gives our clients and the CoJ's points of view and makes no further reference to the anonymous sources (named Pandora and Hercules).

19. In addition to the above our clients request that Carte Blanche is ordered to pay an appropriate fine."

[3] The Broadcaster's representative lodged a comprehensive response and the Complainant's representative was also afforded an opportunity to lodge a comprehensive reply to the broadcaster's response, which we are not going to repeat here as we will deal with the arguments as they were presented to us.

EVALUATION

[4] The complainants Rebosis Property Fund Ltd, Mr S Ngebulana and Billion Group (Pty) Ltd lodged a complaint against M-Net (the respondent) concerning a broadcast which, according to the complainants, created the impression that they were complicit in a corrupt property devaluation scheme conducted in the Property Evaluation Department of the Johannesburg City Council. This programme was broadcast as an insert on Carte Blanche on 16 November 2016.

[5] The Complainant based their complaint inter alia on Clause 28.1.of the Code of Conduct for Subscription Broadcasting Service Licensees which sets the requirements for news programmes. However, this Tribunal has ruled in the past that Clause 28.1.1

is not applicable on investigative programmes such as Carte Blanche as Carte Blanche does not report on news as this term is usually understood.

[6] The complainants also relied on Clause 28.3.1 which deals with controversial issues of public importance and reads as follows:

28.3.1 In presenting a programme in which controversial issues of public importance are discussed, a licensee must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

28.3.2 A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given a right to reply to such criticism on the same programme. If this is impracticable, however, an opportunity for response to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

[7] A controversial issue of public importance implies that the information as such is controversial. Controversial is defined in *The Concise Oxford Dictionary* (1995) as “causing or subject to controversy; disputed, esp. publicly.” The report on which the programme is based has never been in the public domain which begs the question whether it is can be described as controversial. It was made public during the broadcast and although of public importance it cannot unequivocally be stated that it is controversial. The information is shocking but the information in the report was not disputed by any of the participants – not even the complainant in their response to Carte Blanche’s request to be interviewed for the programme. However, in view of the controversial nature of the programme one could argue that the objective of the insert was to provoke a reaction

[8] In terms of Clause 28.2.1 licensees may broadcast comment on and criticism of any actions or events of public importance on condition that the comment is an honest

expression of opinion. Furthermore the comment must be presented in such manner that it is clear that it is a comment. The comment or opinion must be made on facts truly stated or fairly indicated and referred to. The question to be determined is therefore whether the respondent complied with the conditions set out in Clause 28.2.

- [9] The insert begins with images of buildings with the presenter's voice informing viewers that their property rates and taxes contribute significantly to the city of Johannesburg's budget. The calculation of property rates and taxes over a period of four years is explained. This introduction is followed by the presenter referring to a report entitled *Allegations of fraud within the Property Valuation Services Unit* which was released during October 2015. This report, which has not been made public, is the result of an investigation into a corrupt property devaluation scheme allegedly conducted in the Property Evaluation Unit of the City of Johannesburg. According to the report properties in Johannesburg had been devaluated with the result that property taxes decreased. The impact of the loss in property taxes as a result of these devaluated properties is pointed out and four properties are displayed (but not yet identified) in support of the presenter's statement.
- [10] Twenty two properties are identified in the report as properties which were devalued and consequently paid less taxes on. According to the presenter four properties stood out and it turned out that they were owned by Rebois and managed by the Billion Group. The company's offices are described as swanky and a picture of the offices and the CEO of the Billion group is shown. As the story unfolds the focus moves from possible losses as a result of devaluated properties to the identification of the perpetrators of the fraudulent schemes at the City of Johannesburg and their *modus operandi*. The insert ends showing the Mayor of Johannesburg at a police station laying charges after having been informed about the contents of the report.
- [11] The complainant argued that Multi Choice infringed Clause 28.2.1 of the Code as it "relies on an internal report that to the best of our clients' knowledge has not been verified and which our clients are unaware of. It is not identified who prepared the internal report and whether anyone was provided with an opportunity to comment, explain, or challenge the content thereof". Mr Oldwage who represented the complainants at the hearing contended that the respondent violated this clause with

“impunity”.

- [12] It was clear that the report provided the reason for the investigation into the tax implications of the devaluated properties. The presenter indicated that the report was the result of an investigation into the alleged fraudulent devaluation of properties. She followed this up with an interview with Ms Sharon Sabbach whose opinion was sought based upon her previous experience as ward councillor and her qualifications as forensic auditor. She confirmed that the practice (the devaluation of property) existed and stated that a large number of properties in Johannesburg are involved in the property tax issue.
- [13] Comments or opinions must in terms of Clause 24.2 be made on facts truly stated or fairly indicated and referred to. The reason for this requirement is to assist the viewer in deciding how much weight to attach to the opinion or criticism expressed. All the participants who expressed opinions on the programme disclosed the facts on which their opinions were based. The presenter indicated that the report was submitted to Johannesburg City. It later transpired that persons were charged as a result of the findings of the report and that the employees in the Valuations Unit were aware of the report and its findings.
- [14] In their original complaint the complainant indicated that the presenter “largely relied on information from anonymous sources/whistle-blowers for the programme; whose statements could have been rebutted and/or verified from documentation publicly available and by interviewing other witnesses.”
- [15] This argument was reiterated by Mr Oldwage who argued that the programme was significantly defamatory of the complainants and that the respondent acted recklessly. They should have investigated whether the information was true.
- [16] The inference that information provided by anonymous interviewees fell short of the requirements of this clause is unfounded. The requirement is that the facts must be truly stated or fairly indicated. Once again it is for the viewer to decide how much importance to attach to information provided by an anonymous person based on the “quality” of the facts as indicated during the interview.

- [17] The next question is whether the respondent contravened Clause 28.3. In terms of 28.3.1 the broadcaster in presenting a programme in which controversial issues of public importance are discussed, must make a reasonable effort to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot. In terms of Clause 28.3.2 a person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given a right to reply to such criticism on the same programme.
- [18] The nature of this specific programme did not actually lend itself to the presentation of opposing points of view. However, it could be argued that the opposing view in this instance would have been that of the complainants.
- [19] The respondent in the person of Ms Schwendenhein wrote to the complainants on the 27th of October 2016 introducing herself as a journalist in the employ of Carte Blanche and explained that they are producing a programme on property rates and taxes. She informed the complainant that they found a list of 22 properties which were devalued, that it is alleged that employees at the City of Johannesburg were involved in this devaluation and that four of these properties belonged to Rebosis. She provided the same information about the devaluation amounts involved which were mentioned in the programme. She then asked (and this is printed in bold): **Are you aware of this and can you explain how this could have happened?** She requested an on-camera interview and a response to this request by the 28th of October.
- [20] The complainant through the agency of Mr Reinders from Instinctif, an International Business Communications Consultancy, sent their reply on the 29th of October. It is clear that the response did not address the questions raised by Ms Schwendenhein. An explanation is provided on the re-valuation of properties without commenting or referring to the allegations of fraudulent devaluations. It is stated that Carte Blanche's information was factually incorrect and the correct valuations of the properties are provided. The presenter reduced this explanation to a few words mentioning that the valuations of the properties were corrected but she did not provide the new valuations of the properties.

- [21] Mr Oldwage argued that the respondent was negligent in not presenting the facts as provided by the complainant. Mr Milo for the respondent pointed out that the complainants were offered an opportunity for an on-camera interview which they ignored and elected to provide a written response. The whole response could not be read on television as it did not address the fraudulent aspect of the enquiry and also because television is visual. He maintains that the essence of their response was reflected by the presenter.
- [22] It is unrealistic to expect that the presenter should have read the whole response on a programme such as Carte Blanche. Nevertheless, the presenter provided a reasonable reflection of Rebosis' view, albeit without the full context provided in the original response.
- [23] The complainants alleged that the contents of the programme was defamatory in that Rebosis and Mr Ngebulana were portrayed as complicit in the fraudulent devaluation scheme. The following instances were listed by the complainant: The fact that the four Rebosis properties were singled out as benefitting from a dishonest devaluation scheme while the other 18 properties were not mentioned; the description of their offices as "swanky", the inclusion Mr Ngebulana's picture, the reference to Rebosis during the interview with Mbali implying that they participated in the fraud; that the Hawks were investigating the fraud and that the Mayor laid charges at the police station after having been notified of the contents of the report.
- [24] It cannot be denied that Rebosis received quite a build-up in the programme. Although the instances listed by the complainants can all be justified by the respondent, the vague impression that Rebosis could be involved in the fraudulent devaluations, cannot be ignored.
- [25] Mr Milo relied *inter alia* on the reasonable publication defence. This defence was developed by the Supreme Court of Appeal in *National Media Ltd and Others v Bogoshi* 1998 (4) SA 1196 (SCA) and endorsed by the Constitutional Court in *Khumalo* 2000 (3) SA 422(CC)[120]. In terms of this defence a publisher or broadcaster will not be liable for defamation if the publisher acted reasonable and

without negligence. Mr Milo pointed out that the BCCSA stated that this approach which is based on reasonableness should also be applied to the Code (*Madibeng Local Municipality v M-Net* (Case 15/2015)).

[26] Mr Milo argued that the respondent's conduct was that of the reasonable journalist in that all reasonable steps were taken to ensure that the information was correct. However, the problem is not necessarily the factual correctness of the information but the possible inferences which can be drawn from the manner of its presentation. It was reasonable for the respondent to accept the correctness of the report based on the requirements for the reasonable publication defence as set out in the *Bogoshi*- case and adopted by the BCCSA. If the respondent took all reasonable steps to ensure that the information is correct, the only question left to determine is whether the respondent can be held liable for the possible inference of dishonesty on the part of Rebois that can be drawn from the presentation of the insert.

[27] Any such inference will in the final instance be based on the fact that Rebois was included as owner of four properties in the list of 22 properties identified in the report. The complainant had the opportunity to address its inclusion on the list but declined the opportunity of an on-air interview and failed to address the issue in its written response, thereby sealing its own fate.

[28] In the result it is found that the respondent did not contravene Clause 28.1, as stated in paragraph [5] above, Clause 28.2 or Clause 28.3 of the Code and the complaints are not upheld.

PROF S LÖTTER
DEPUTY CHAIRPERSON

Chairperson HP Viljoen and Commissioner Naidu concurred with the judgment of the Deputy Chairperson