



P.O.Box 412365 • Craighall • Tel (011) 326 3130 • Fax (011) 326 3198 • email: [bccsa@nabsa.co.za](mailto:bccsa@nabsa.co.za)  
Block No 8 • Burnside Island Office Park • 410 Jan Smuts Avenue • Craighall Park • 2196 • [www.bccsa.co.za](http://www.bccsa.co.za)

**CASE NUMBER: 02/2019**

**DATE OF HEARING: 06 FEBRUARY 2019**  
**JUDGMENT RELEASE DATE: 04 APRIL 2019**

**PLANK**  
**KWAPE & MURPHY KWAPE MARITZ**  
**ATTORNEYS, RANDBURG**

**FIRST COMPLAINANT**  
**SECOND COMPLAINANT**

**vs**

**SABC2**

**RESPONDENT**

**TRIBUNAL: PROF HP VILJOEN (CHAIRPERSON)**  
**DR MOHAMED CHICKTAY**  
**MS NOKUBONGA FAKUDE**

**FOR THE COMPLAINANT: The first Complainant, Mr Alan Plank, the second Complainant Mr Tebogo Kwape and Mr Jerome Levits, attorney from Fluxmans**

**FOR THE RESPONDENT: Mr Nyiko Shibambo, Acting Manager: Broadcasting Compliance accompanied by Ms Refiloe Timana, Compliance Officer and Mchavi of Policy & Regulatory Affairs, Mpho Vilana, Executive Producer, Shozi Thando, Head of Factual, Ntsoreko Refilwe Mogatusi, Commissioning Editor, Factual; Sifiso Magudulela, Producer; Nonhlanhla Mabete, Assistant Commissioning Editor**

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*Complaint that the broadcaster violated Clauses 12(1), 12(2) and 13(2) of the Code of Conduct in a programme called "Speak Out". The Complainants complained that the programme was not factual in that payments were made by Mrs Mkhize to Lancer Trading 1022 CC t/a Mobile*

*Trailer Solutions and not to Alan Plank. Both Complainants argued further that they were not given right of reply in violation of Clause 13(2) - Tribunal found that the broadcast was of public importance and expressed Mrs Mkhize's opinion on the facts - Tribunal found further that both Complainants were given a reasonable right of reply - thus not in violation of Clause 13(2) of the Code. Plank, Murphy Kwape Maritz Attorneys and Kwape vs SABC2, Case No: 02/2019 (BCCSA)*

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## SUMMARY

**This is a complaint that the Broadcaster contravened Clauses 12(1), 12(2) and 13(2) of the Code of Conduct in a programme called “Speak Out”. The Complainant averred that the facts were not true as Ms Mkhize paid R286 000.00 to Lancer Trading 1022 CC t/a Mobile Trailer Solutions and not to the first or second complainant. The two Complainants argued further that they were not given any reasonable right to reply. The Tribunal found that the Broadcaster was not in violation of Clause 12(1) as there was a public interest in the broadcast. Ms Mkhize had used public funds to pay the first Complainant who acted on behalf of Lancer 1022 CC t/a Mobile Trailer Solutions. There was also a large number of complaints by the public on hellopeter.com against the first Complainant. Clause 12(2) was also not violated as the SABC had merely broadcast Ms Mkhize's opinion on the facts. Ms Mkhize had dealt with the first and second Complainant who acted on behalf of Lancer 1022 CC t/a Mobile Trailer Solutions. The two Complainants were also given a reasonable right to reply to allegations made in the broadcast. The first Complainant was running away when confronted by the programme host and the second Complainant was called a week before the broadcast but refused to take the opportunity to reply.**

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## JUDGMENT

### DR CHICKTAY

[1] The Registrar of the BCCSA received a complaint from Mr Alan Plank (First complainant), Murphy Kwape Maritz Attorneys and Mr Tebogo Kwape (Second complainant) against the broadcast of the programme “Speak Out” on SABC.

[2] **The complaint by the first complainant reads as follows:**

“ALAN PLANK / SPEAK OUT

I hereby lodge a formal complaint against Speak Out. The complaint stems from a feature aired on Speak Out on 28 September 2018. On 7 September 2017 (**over a year ago**) I was literally ambushed by the Speak Out team whilst I was at MKM Attorneys. The complainant was present and hurling abuse. I refused to be interviewed on that day under those circumstances. On 14 September 2017, I requested my attorneys of record, Flaxman’s Inc. to address a letter to Speak Out. Speak Out never responded to the letter, yet aired the feature on 28 September 2018 (1 Year Later).

**My Complaint**

1. During the feature no reference is made to my attorneys letter;
2. The feature fails to truthfully, accurately and fairly record the facts namely that:-
  - 2.1 The presenter displays on the screen an invoice dated 23 September 2016, which clearly demonstrates that the invoice was generated by Lancer Trading 1022 CC t/a Mobile Trailer Solutions;
  - 2.2 Lancer Trading 1022 CC t/a Mobile Trailer Solutions was to the presenter and Mrs Lebogang Mkhize’s (Mrs Mkhize”) knowledge liquidated. Neither make any mention thereof;
  - 2.3 Mrs Mkhize records that I owe her the sum of R286 000.00.;
  - 2.4 To Mrs Mkhize and the presenter’s knowledge I never owed her the amount of R286000.00 or any amount whatsoever;
  - 2.5 The presenter displays a proof of payment with a blurb that “Viewers this the R286 000.00 proof of payment that Lebogang paid Alan Plank”. Neither the presenter nor Mrs Mkhize advised the viewers that the truth of the matter is that the money was paid into Lancer Trading 1022 CC t/a Mobile Trailer Solutions’s bank account and not my bank account;
  - 2.6 During the interview the presenter asked Mrs Mkhize how he can help her. She responds that she would like him to assist her in getting possession of, *inter alia*, the mobile toilet. The next clips show that Mrs Mkhize is in fact in possession of the mobile toilet, as well as the mobile fridge.
3. Notwithstanding having received the aforementioned Mrs Mkhize and the presenter still represent to the public that I owe them the sum of R286 000.00, when in truth Mrs Mkhize had already received the fridge and the partially incompleted toilet.
4. The presenter states as a fact that he has “letters here from other client’s who’s money has also been stolen.” The presenter presents no fact that I have stolen any money, as these facts do not exist. Lancer Trading 1022 CC t/a Mobile Trailer Solutions entered into a number of contracts which it could not fulfil due to the fact that it was liquidated. There is no evidence whatsoever that I have stolen any money, yet such imputation was presented by both the presenter and Mrs Mkhize.

5. The remedy that I require is that Speak Out publishes an on air apology to me, apologising for imputing that I am a criminal and setting the facts straight that, I do not owe Mrs Mkhize any money whatsoever.
6. I kindly request you to investigate my complaint and instruct Speak Out to air the apology as set out above.”

I kindly request that the BCCSA will reply as soon as possible.”

**[2] The complaint by the second complainant reads as follows:**

**“Re: Formal Complaint against Speak Out and the SABC 2 (Murphy Kwape Maritz Attorneys Randburg, T. Kwape & A. Plank)**

1. This letter serves as a formal complaint against the SABC 2 and the Speak Out.

27 September 2018 Speak Out TV feature

2. This complaint is with regard to a Speak Out feature aired on the 27<sup>th</sup> of September 2018 in the evening. This specific program aired a complaint by a certain Lebo Queen Mkhize. The complaint by the said Lebo Queen Mkhize and the allegations made on air by her and a Speak Out interviewer named Lesley Musina were against Alan Plank and Tebogo Kwape. This is a complaint by Tebogo Kwape. Alan Plank has a law firm representing him in his complaint.
3. The following *inter alia*, were said by Lebo Mkhize on the aired feature:
  - 3.1. She had paid Alan Plank an amount of R186’000.00 to construct alternatively fabricate a mobile toilet, mobile fridge and food warmer;
  - 3.2. Proof of what seems to be an invoice was shown on the feature as proof of what was paid;
  - 3.3. Alan Plank phoned and requested his lawyer to come to their offices;
  - 3.4. Alan Plank said Tebogo Kwape would help him with everything;
  - 3.5. When Tebogo Kwape arrived and spoke to her (Lebo Mkhize), he told her that, she had been swindled (“O jelwe”, Setswana for swindled) of money by Alan Plank and that Alan Plank had taken her for a ride;
  - 3.6. Alan Plank did not deliver to her what she paid for;
  - 3.7. Alan Plank stole an amount of R286’000.00 from her;
  - 3.8. Tebogo Kwape was a partner of Alan Plank;
  - 3.9. Tebogo Kwape was Alan Plank’s lawyer;
  - 3.10. Tebogo Kwape and his law firm protected Alan Plank;
  - 3.11. She needed assistance from Speak Out to get the partners Tebogo Kwape and Alan Plank to give her, her mobile toilet and mobile food warmer;
4. Accompanying Lebo Mkhize was a Speak Out program interviewer named Lesley Musina. There were also at least 2 cameras and camera men and 2 camera lighting men a driver of the minibus combi, a bodyguard, a gentleman who we believe was an investigator. Lesley Musina made the following statements:
  - 4.1. Murphy Kwape Maritz attorneys’ offices are also Mobile Trailer Solutions premises and Mobile Trailer Solutions work from the same premises;
  - 4.2. That he had given Tebogo Kwape an opportunity to explain his relationship with Alan Plank but refused to explain;

- 4.3. People were watching Tebogo Kwape, the rest of South Africa were watching him;
- 4.4. Tebogo Kwape had refused to speak to Speak Out and told them to make an appointment;
- 4.5. Read other complaints from other people who had been robbed and were given Tebogo Kwape's number and that when they phoned him he did not answer;
- 4.6. If there isn't anything Tebogo Kwape was hiding, why won't he talk to Speak Out?
- 4.7. After someone had paid R286'000.00, is that how they should be treated and that, that was unacceptable;
- 4.8. Speak Out had received a letter from MKM Attorneys and they (Speak Out) were in the process of replying to that letter and questioned what was MKM saying about the loan of R286'000.00 Lebo Mkhize had to pay back, her failed business and that she was the one who had been affected;
- 4.9. There were other complaints of a similar nature where people's money had been taken and examples of monies lost were R18'919.18, R53'100 and R100'000.00 among others;
- 4.10. One of the victims says that they had tried to phone Tebogo Kwape and that he never answers his phone.

#### 7 September 2018 Speak Out Ambush

5. On the 7<sup>th</sup> of September 2017 at around 15h45, the television Speak Out crew hurriedly drove into the driveway of our Randburg office. A television crew numbering around 7 people with cameras, lights etc. rushed out of the vehicle and pursued and recorded a Mr. Alan Plank who at the time was at our offices. The Speak Out recording continued for the whole afternoon. Our Mr. Kwape, Mr. Plank and the property were recorded.
6. During the recording, Lesley Musina, the interviewer and Lebo Mkhize, hurled insults and a barrage of questions and accusations against Mr. Plank, Mr. Kwape and the law firm, Murphy Kwape Maritz attorneys.
7. Mr. Plank went into the offices to avoid this unexpected and overwhelming ambush, loud insults and accusations and intimidation by both the Lesley Musina and Lebo Mkhize. To try and diffuse the commotion, Mr. Kwape introduced himself, calmly greeted the Lesley Musina who was with a recording crew with Lebo Mkhize and suggested to him that he sits down with our Mr. Kwape and assist him with questions he might have. Mr. Kwape has had several meetings with Lebo Mkhize and is familiar with her complaint against Lancer Trading CC a company currently under liquidation.
8. The interviewer continued with a barrage of questions and accusations with Lebo Mkhize constantly disrupting the conversation loudly with her defamatory and damaging allegations against Mr. Kwape and the law firm. She among other things stated that Mr. Kwape was Alan Plank's partner, was harboring and protecting a criminal, thief and fraudster who had stolen her money and other people's money and that the law firm was protecting him.
9. She also stated that Mr. Kwape and Mr. Plank were scammers who were scamming people of their money. She stated that Mr. Kwape and the colleagues who were with him at the time were fools. Lebo Mkhize has on a previous occasion informed Mr. Kwape that "he and Alan should continue chopping other people's money" meaning continue stealing people's

monies. All of this was done in full view of adjacent properties and neighbors and onlookers who had suddenly gathered to watch the sudden commotion.

10. Mr. Kwape refused to be subjected to further ridicule but still extended an invitation for a calm and informative truth sharing session with Lesley Musina and he was not interested. It became clear from the outset that it would not be possible to have any meaningful and productive fact finding session with Lesley Musina, the interviewer mainly because of his demeanor of uninterest, confrontational and disingenuous questioning and the heavy handed approach of the entire crew. Throughout, Lebo Mkhize was very loud, rude and made it impractical to have any meaningful verbal exchange.
11. At some point, Lesley Musina specifically stated openly that Mr. Kwape was complicit in what Lebo Mkhize had accused Mr. Plank and his company, meaning of *inter alia*, the stealing of people's monies and fraud by Mr. Plank and his company, a company which is in fact in the process of a liquidation. Lesley Musina made veiled threats against Mr. Kwape with regard to the Law Society and questioned his reputation as an attorney. This was done openly in full view of the adjacent properties and other onlookers who had suddenly gathered to see what the commotion was about. He was simply not interested in a meaningful exchange that would have assisted in giving him factual information.
12. From the outset and on Speak Out's arrival and when Mr. Kwape first spoke to Lesley Musina, he informed the Speak Out people that they were on his property without his permission and illegally. He was specific in informing them that they were trespassing and repeatedly requested them to vacate the property. They refused to leave the premises and stayed on until around 18h45. They only vacated the property when Mr. Kwape informed them that he now needed to lock the premises and leave and told them that he would lock them in if they did not leave.
13. At some point, the Speak Out vehicle blocked staff and client's vehicles in. That vehicle only moved when Mr. Kwape became very firm and scolded the driver to move from the firm's drive way.
14. In a letter addressed to Speak Out content director and the SABC 2 sent to them in 2017 September, he complained of the above incident and requested names of all Speak Out personnel who were there however; no response has since been given to that letter. In light of the fact that a crime of trespassing, *crimen inuria* and intimidation was committed, we wished to report this at the Linden Police station for the law to take its course. They were in effect warned of airing a defamatory and inaccurate story based only on a version Tebogo Kwape had not been granted an opportunity to give his own version to.

#### Truth and facts Speak Out was not interested in

15. Tebogo Kwape a partner at Murphy Kwape Maritz attorneys has on a few occasions given Alan Plank legal assistance. The law firm has offices at 405 Jan Smuts avenue Randburg.
16. Tebogo Kwape has other businesses including a business of hiring out mobile fridges etc. he owns numerous trailers and hires them out on occasion. Alan Plank and Mobile trailer Solutions have never been a part of that business.
17. Tebogo Kwape also runs a trailer manufacturing business. When Alan Plank ran into financial difficulties, Tebogo Kwape intervened and agreed to have Alan Plank work for his company on a part time basis. This was going to assist Alan Plank in his financial troubles. This occurred after Lancer Trading was liquidated and Alan Plank had asked for employment from this company.

18. Tebogo Kwape was requested by Alan Plank to intervene in meetings where the Mobile Trailer Solutions customers needed to get someone with a legal background to explain matters related to liquidations, processes of claims etc. in certain instances, that function took the form of a mediation role as some of the customers threatened Alan Plank and his family with physical violence.
19. Tebogo Kwape encountered Lebo Mkhize at the time when Mobile Trailer Solutions ran into financial difficulties and was one of those Tebogo Kwape was providing legal counsel to and mediating between him and Alan Plank.
20. Tebogo Kwape gave Lebo Mkhize all the information he could possibly give to her about liquidations, processes to follow to lodge a claim and possible outcomes of liquidations.
21. Tebogo Kwape in his mediation efforts facilitated that Alan Plank, from his own private funds build Lebo Mkhize a toilet and then deliver it to her. Part of what Tebogo Kwape undertook to Lebo Mkhize was that he would monitor the build process, keep Lebo Mkhize regularly updated and if need be, send her pictures of the unit as and when there was progress and changes.
22. Alan obliged and began with the construction of this toilet. Chassis was fully assembled, panels were constructed and mounted on the chassis, all openings cut, and tanks fitted etc. During all of this time, Lebo Mkhize would arrive at the factory unannounced, harassed the workers and disrupted them when they were in fact busy with her mobile toilet attempting to finish it and have it delivered to her.. At some point, Tebogo Kwape was called and went to the factory to beg Lebo Mkhize to stop disrupting and harassing the workers.
23. She would question why Alan Plank had hired Zimbabweans and would belittle them to a point where they threatened to stop working on her mobile toilet. Alan Plank appealed to them to continue with the unit and they agreed to. Around the month of May 2017, Tebogo Kwape received a phone call from Lebo Mkhize who said that she wanted her incomplete, still constructed mobile toilet to be delivered to her home immediately. She was in direct communication with Tebogo Kwape at the time. Tebogo Kwape cautioned that the unit was as she was aware still under construction, around 70% complete and that she should be patient as she would get her unit as promised. She refused and insisted on the delivery of an incomplete unit.
24. Tebogo Kwape made sure that this incomplete mobile unit was delivered to Lebo Mkhize's home at Cosmo City. She then thanked Tebogo Kwape for keeping his word. She then began coming to our offices demanding that her toilet be finished. This was no longer practical and had been warned that if she took an incomplete unit it would very difficult to complete.
25. She would walk up and down and around our premises, accusing Tebogo Kwape of harboring a white man against a black sister, would phone television people and tell them that Alan's Partner was there at the premises and that they should come. This was done in full view of neighbors who were very concerned. She portrayed to everyone listening that Tebogo Kwape was a partner of Alan plank and that they had both stolen money from her. She refused to accept that Tebogo Kwape was merely trying to assist.
26. Alan Plank had at this time also began constructing other units and paid for these out of his pocket to make up for the loss suffered of some of the liquidated company's customers. He did not have to do that but he felt he needed to rectify the loss caused at least to as many people as he financially could. Tebogo Kwape offered his premises for Alan Plank to undertake this. In fact, several units were completed and handed over to some customers from this private initiative. Lebo Mkhize was supposed to have been one of them.

27. Lebo Mkhize has received a mobile food fridge already. She has also received a 70% complete mobile toilet. The only outstanding unit is a food warmer which she could have received had she not made it impossible for Alan Plank to construct. Tebogo Kwape has kept a record of sms communication where she has insulted him and other related communication.
28. Tebogo Kwape is not a member of and has never been a member of Mobile Trailer Solutions trading as Lancer Trading close corporation. There has never been any business connection between this company and Tebogo Kwape.
29. Tebogo Kwape has never benefited financially from any monies paid into Lancer Trading close corporation. The only connection which exists is the assistance detailed above; Tebogo Kwape gave to Alan Plank.

Damage caused to the reputation of MKM attorneys and Tebogo Kwape

30. Tebogo Kwape and MKM attorneys were publicly given a blanket accusation in the alleged 'theft' or misappropriation of monies paid to Mobile Trailer Solutions, the fraud and every other accusation levelled against Alan Plank and Mobile Trailer Solutions. He is said to have been complicit in a crime. He has been bundled into a scamming ring, swindling innocent people out of their hard earned money. For a person who watched the show, Tebogo Kwape and Alan plank stole monies from customers of Mobile Trailer solutions. This is the impression given on the show.
31. From the same evening the feature was aired, friends and some people known to Tebogo Kwape have phoned or sent messages to enquire and get an explanation as to what he had done to people. There are persons in the legal fraternity who have also seen the programme and now regard Tebogo Kwape as a thief and scammer. The extent and gravity of the damage caused to his name is not immediately determinable but so far and what can be established is vast. At some point, in a discussion between people in the legal fraternity, Tebogo Kwape was put in the same class of attorneys who had been removed from the attorneys roll and who had been involved in loss of trust monies. In their eyes, he was the same as those attorneys. He is also viewed as a scammer who cannot be trusted with people's monies.
32. Tebogo Kwape is a practicing attorney, a partner in a firm which operates 2 offices, one in Randburg and another in Pretoria. Tebogo Kwape has been in practice for approximately 19 to 20 years. The firm operates trust accounts which regularly receives funds from clients. Any person who comes across this aired feature or informed of it will never or be very reluctant to do any business with the firm. That is the extent of the damage caused. His other businesses will also suffer the same fate as a result. The pursuit for a "juicy story" at the expense of truth (that has no truth and merit in it) has very costly implications for victims like Tebogo Kwape and his law firm. This is wrong and need to be punished.
33. Our Mr. Kwape on several occasions offered to sit down with Lesley Musina and give him factual and accurate information as he was privy to same. He refused all of these offers. He was simply not interested in the truth but in a recording which will be attractive, have good ratings and entertaining to the Speak Out audience.
34. We record that all insinuations and accusations against our Mr. Kwape, the firm are untrue, without merit, baseless, reckless and are intended to damage their reputation.
35. We shall await feedback of this complaint from your office."

[3] **The SABC responded as follows:**

"In respect of the above-mentioned complaints, we submit an electronic copy of the broadcast. Please, find our comments as follows:

1. *Speak Out* is a 24 minutes Consumer Rights Programme on SABC 2. The show receives complaints through letters, fax, email, walk-ins and WhatsApp messages. We receive complaints when a consumer has a dispute and their consumer rights have been allegedly been violated by a service provider, in that, either both goods and services have not been delivered or delivered in a substandard or defective manner.
2. Upon receiving the complaints, complaints are thoroughly investigated and analysed as per the Consumer Protection Act (CPA), to determine the right violated by the business and how it has affected the consumer's rights. Once satisfied with the story and evidence gathered we proceed to shoot at the complainant's home and thereafter visit the business and/or other premises and engage on the matter with Lesley Musina, who is the presenter of the programme to mediate on the issue at hand.
3. Amongst other methods, *Speak Out* uses the "door stepping" kind of journalism. The term "door-stepping" is used to denote an attempt to obtain an interview from a contributor without prior arrangement or agreement, typically by confronting them in a public space, such as outside their home, workplace or courthouse or public space.
4. The foregoing gives one an understanding of the processes that are involved when *Speak Out* receives a complaint and pursue it resulting in a broadcast on SABC 2.
5. The Episode that was broadcast on 28 September on SABC 2 at 21:30 stated that *Speak Out* was furnished with a letter from the attorneys and was displayed and read by the presenter.
6. The research team and producers gathered relevant and substantial evidence prior to recording.
7. The presenter states that the payment was made to Alan Plank, owner of Lancer Trading 1022 cc t/a Mobile Trailer Solutions on 23 September 2016; according to information and status obtained from Companies and Intellectual Property Commission (CIPC) is that the Close Corporation, Lancer Trading 1022, registered director, Alan Brian Plank enterprise number 2006/085048/23 was under voluntary liquidation.
8. It is worth noting that the company was fully operational during the so called "voluntary liquidation" during the course of *Speak Out's* engagement with it;
9. We deem it relevant to draw the Commission's attention to the provisions of section 62 of the Consumer Protection Act (Part 1 Supplier's accountability to consumers). For ease of reference, we have set the section out:

*"62.(1) If a supplier agrees to sell particular goods to a consumer, to accept payment for those goods in periodic instalments, and to hold those goods until the consumer has paid the full price for the goods—*

- (a) *each amount paid by the consumer to the supplier remains the property of the consumer, and is subject to section 65, until the goods have been delivered to the consumer; and*

- (b) *the particular goods remain at the risk of the supplier until the goods have been delivered to the consumer.*
- (2) *If a supplier is unable to deliver any goods contemplated in subsection (1) when the consumer has paid the full price for those goods, the supplier must either, at the option of the consumer—*
- (a) *supply the consumer with an equivalent quantity of goods that are comparable or superior in description, design and quality; or*
  - (b) *refund to the consumer—*
    - (i) *the money paid by the consumer, with interest in accordance with the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), if the inability to supply the goods is due to circumstances beyond the supplier's control; or*
    - (ii) *double the amount paid by the consumer, as compensation for breach of contract in any circumstances not contemplated in subparagraph (i).*
- (3) *Without limiting the generality of subsection (2)(b)(i), a failure to supply the partially, completely, directly or indirectly from a failure on the part of the supplier to adequately and diligently carry out any ordinary or routine matter pertaining to the supplier's business.*
- (4) *If a consumer contemplated in subsection (1) terminates the agreement before fully paying for the goods, or fails to complete the payment for the goods within 60 business days after the anticipated date of completion, the supplier—*
- (a) *may charge a termination penalty in respect of those goods, subject to subsections (5) and (6); and*
  - (b) *after deducting any such termination penalty, must refund to the consumer any amount paid by the consumer under that agreement.*
- (5) *A cancellation penalty contemplated in subsection (4) may not be charged—*
- (a) *if the consumer's failure to complete payment was due to the death or hospitalisation of the consumer; or*
  - (b) *in any other case, unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay-by agreement.*
- (6) *The Minister may prescribe a basis for calculating the maximum amount of a cancellation penalty contemplated in subsection (4).*
10. We also draw your attention to the communications below from Alan Plank ("Plank") to Mrs Mkhize. For ease of reference we have set same out (the original exchange of emails are attached to this letter)

*"Good Morning Queen*

*As discussed I would like to confirm that we remain committed to completing the last x2 trailers.*

*As you saw the toilet is in assembly and we are aiming to have it complete in the next 5 working days.*

*The food warmer is also in assembly but will still require a further 10 working days to be completed.*

*With regards to the GEP payments I have given you my commitment that I will compensate you for the months that you have paid for, without having received the trailers to generate income.*

*Once again I reiterate that we are completing your last x2 trailers and apologies for the delay and frustration that this has caused.*

11. The SABC agrees the monies were paid by GEP into the companies' account, however, given that Alan Brian Plank is 100% member thereof and in light of what is set out in the above-mentioned paragraph, Speak Out does not believe the reference of monies being paid to Plank was incorrect in the context of this matter;
12. On the timeline, it clearly is visible that the only completed structure is the mobile fridge; the toilet is nowhere near completion. We note also from the email above that the toilet was not completed and there was a commitment to complete same. Therefore it is not entirely correct that the mobile toilet was in her possession given that there is reference to "the partially completed toilet."
13. With regards to evidence of the other complaints referred to, *Speak Out* was furnished with material from [www.hellopeter.com/mobile-trailer-solution-ta-lancer-trading-1022-cc/reviews/criminals-bad-service-2269891](http://www.hellopeter.com/mobile-trailer-solution-ta-lancer-trading-1022-cc/reviews/criminals-bad-service-2269891) (these are attached as Hellopeter complaints).
14. Based on the above information Mr Alan Brain Plank did receive an amount of R286 000 from GEP for his customer's catering equipment and therefore he is liable to refund the customer or deliver the equipment in working order as paid for.
15. *Speak Out* researched and investigated the matter before visiting Mr Plank's premises and based on the investigation that Mr Plank had not stuck to the end of his bargain to deliver the items as per his contractual agreement and correspondence with Mrs Mkhize, his client.
16. It is our view that Mr Plank and/or the enterprise as the supplier should have never treated any payment made by the consumer, Mrs Mkhize as the CC's and/or his, until all goods were delivered as per their contractual agreement, this being in line with the support of the CPA.
17. *Speak Out* saw it fit to engage and report on the above mentioned story as it is of public interest.
18. Mrs Mkhize who approached us for assistance heeded the government's call for South Africans to become entrepreneurs, in turn create employment for other South African men and women. Small to medium business have been at the forefront of creating employment and they are generally considered the fuel of the economy as over 50% of formal and informal employment is created by SMME's.
19. As a result of not receiving all goods paid for to Mr Plank, she had to put brakes on her mobile catering business, resulting in none profits for her business and her credibility to her business associates who have since sought services from other service providers as she was in no position to fulfil her obligations. Mrs Mkhize is sitting with monthly loan repayments of over R 7 000 that she cannot afford because she is unable to perform her duties bearing in mind that she was granted a loan of over R280 000.
20. It is not only Mrs Mkhize's complaint that encouraged *Speak Out's* intervention. There has been a public outcry against Mr Plank and his company. There are a number of complaints in the public domain like on Hellopeter.com against Mr Plank and the striking similarities

were too alarming. The common factor with these is that other complainants were alleged robbed of hundreds of thousands of rands.

21. Furthermore, the money paid to Mr Alan Plank's business enterprise was generated using public funds from the Gauteng Enterprise Propeller (GEP). It should be noted that the GEP has on occasions tried to intervene in the matter, to no avail. During our broadcast engagement with the GEP, it was categorically stated by their representatives that the matter is with their legal department who will be pursuing it further.
22. With all this said, it is the SABC's core deliverable as a public broadcaster to educate unsuspecting public from falling victim to unscrupulous business and to prevent them from falling prey to unethical businesses.

With this said, the SABC believes that this broadcast was based on facts. The SABC therefore, is not in a position to offer an apology as per the demand by the complainant."

[4] **The first complainant replied as follows:**

"The SABC in their response has failed to deal with any of my complaints.

On its own version the SABC records that "the payment was made to Alan Plank". This is false.

In light of the admission contained in numbered paragraph 11 of their response, it is astounding that Speak Out "does not believe that the reference to money being paid to Plank was incorrect". On their own version this is factually and legally incorrect.

I did not receive payment, as alleged or at all as verified by the proof of payment in the SABC's possession.

The allegations that I am "liable to refund the customer" the amount of R286 000.00 is factually and legally incorrect. Money was paid to a Close Corporation that went into liquidation.

The program was aired more than **1 year after** the day of the recording, and 18months after the Closed Corporation was placed into Liquidation.

The Broadcast that was publicly aired on SABC2, portrayed the events as if the were recently taken, but this was not the case as more than 1 year had passed since the day of the recording.

The program was again re-broadcasted as a repeat on SABC2 last month again, even after of our complaint lodged with the BCCSA and the SABC's receipt thereof.

I note the purpose of Speak Out as set out in numbered paragraph 22 of the SABC's response. This does not give them the right to act as they did. I persist with my request as set out in numbered paragraph 5 of my complaint."

Furthermore, with reference to - THE BCCSA'S CODE OF CONDUCT FOR SUBSCRIPTION BROADCASTING SERVICE LICENSEES (Published on the BCCSA's Website) I am of the opinion that the "Speak Out" Program aired on SABC2 have failed to comply with the code of conduct, as laid out by BCCSA, by airing this program."

## EVALUATION

[5] I find that the SABC was not in violation of Clauses 12(1), 12(2) and section 13(2) of the Code.

Clause 12 of the Code states that:

- (1) Broadcasting service licensees are entitled to broadcast comment on and criticism of any actions or events of public importance.
- (2) 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) Where a person has stated that he or she is not available for comment or such a person could not reasonably be reached, it must be stated in the programme.

[6] The SABC is entitled to broadcast events of public importance. In *Glickman v SABC 3, Case No: 21/2013* the Tribunal indicated that “public interest” is a matter that deals with pertinent issues within South Africa. Mrs Mkhize’s complaint against Lancer Trading 1022 CC t/a Mobile Trailer Solutions, the first and second Complainant was of public importance as it was of pertinent interest within South Africa. Even though Lancer Trading 1022 CC t/a Mobile Trailer solutions is a separate legal person, in that it is able to own property and enter into contracts in its own name, it is run by its members. Mrs Mkhize had paid R286 000.00 to Lancer Trading 1022 CC t/a Mobile Trailer Solutions, which was run by the first Complainant at times with the assistance of the second Complainant. After paying this amount, Mrs Mkhize did not receive all that she was contractually entitled to. The public needs to be made aware of these facts when deciding whether to do business with Lancer Trading 1022 CC t/a Mobile Trailer Solutions as run by the Complainants. The public’s interest in this matter was already expressed as a number of complaints were already made against the Complainants on the [helloworld.com](http://helloworld.com) website, which is a well-known website where members of the public can make complaints against businesses. Mrs Mkhize borrowed the money from the Gauteng Enterprise Propeller (GEP), an enterprise that procures funds from the public. It is therefore public money that Mrs Mkhize used and she remains liable to repay the money, despite not receiving a service from the Complainants. Thus the SABC was in compliance of Clause 12(1).

- [7] The SABC was also in compliance with Clause 12(2) of the Code. The SABC presented Mrs Mkhize's opinion on the facts. Mrs Mkhize indicated that she had paid R286 000.00 to Mr Alan Plank who ran Lancer Trading 1022 CC t/a Mobile Trailer Solutions. While the money technically may have been paid to Lancer Trading 1022 CC t/a Mobile Trailer Solutions, Lancer Trading 1022 CC t/a Mobile Trailer Solutions was in fact run by the first Complainant, who was the only member of the CC, at times with the assistance of the second Complainant.
- [8] The SABC was also not in violation of Clause 13(2) of the Code. Clause 13(2) states:  
A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given the right to reply to such criticism on the same programme. If this is impracticable, reasonable opportunity to respond 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.
- [9] In the case of *Prophet Bushiri v SABC2, Case No: 12/2018* the Tribunal signified the importance of both sides being given an opportunity to provide their version so that there is a balance in the broadcast. In that case the Complainant was not given an opportunity to present his version. This case differs significantly from those facts. At the hearing members of the Tribunal viewed the broadcast. It was clear from the broadcast that the first Complainant was given an opportunity to respond on a number of occasions but instead ran away and refused to take the opportunity to respond to criticisms made against him by Mrs Mkhize. While the second Complainant did speak to the Broadcaster in the programme, he did not discuss the complaint. The SABC indicated that they had called the second Complainant a week before the broadcast to reply to allegations made by Mrs Mkhize but the second Complainant refused to take up this opportunity to reply. The SABC had thus given both the first and second Complainants a reasonable opportunity to reply to complaints made against them by Mrs Mkhize, which they themselves refused to take.
- [10] The respondent is thus not in violation of Clauses 12(1), 12(2) and 13(2) of the code.

**The complaint is accordingly not upheld.**



**DR. MOHAMED ALLI CHICKTAY**

**COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION**

*Chairperson Viljoen and Commissioner Fakude concurred in the above judgment.*