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CASE NUMBER: 04/2019

DATE OF HEARING: 27 FEBRUARY 2019
JUDGMENT RELEASE DATE: 01 APRIL 2019

MAKAU

COMPLAINANT

vs

MULTICHOICE CHANNEL 157

RESPONDENT

TRIBUNAL: PROF HP VILJOEN (CHAIRPERSON)
MR BRIAN MAKEKETA (DEPUTY CHAIRPERSON)
MS NOKUBONGA FAKUDE

For the Complainant: Adv Michael Laws, instructed by Attorneys B Mzamo Incorporated accompanied Mr Makau.

For the Broadcaster: Mr Bruce Mkhize, Head: Regulatory and Compliance accompanied by Ms Jacqueline R Setai, Head of Channel, Nxolo Mthethwa, Producer and Percy Mthethwa: Ex Producer of No Excuse: Pay Paggeld.

Complaint about the alleged infringement of the privacy and dignity of Complainant by the flighting of a promo in which Complainant is identified – scope of application of clause 28.4 of Code for Subscription Broadcasting Service Licensees is extended by legal interpretation to all broadcasts in which privacy and dignity of individuals are being violated – contravention of Code found and complaint upheld - Makau vs Multichoice, Case No: 04/2019 (BCCSA)

SUMMARY

This is a complaint about the alleged infringement of the privacy and dignity of the Complainant by the flighting of a promo in which the Complainant is identified despite the fleetness of the scenes. Scenes depicting confrontation between the presenter and the Complainant on private property, resulting in a free for all between wedding guests and TV crew, found to be impairment of right to privacy and dignity of Complainant. In the judgment, the scope of application of clause 28.4 of the Code for Subscription Broadcasting Service Licensees is extended by legal interpretation to all broadcasts in which the privacy and dignity of individuals are being violated, not only in news broadcasts and broadcasting of comment on and criticism of actions and events of public importance. Contravention of the Code found and the complaint is upheld. A fine of R20 000 is imposed.

JUDGMENT

PROF HP VILJOEN

[1] The Registrar of the BCCSA received a complaint from the Complainant concerning the broadcasting of a promo to advertise a programme in which the Complainant would be exposed as a parent who shirked his duty to pay maintenance for his children, because this is the object of the programme called “No Excuse, Pay Paggeld”. Although the scenes in the promo are fleeting, the Complainant could be identified. The complaint is aimed at the promo because the programme which is advertised has not (yet?) been broadcast.

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

“Subject: Registration of a complaint again - "No Excuses Pay Your Paggeld" - Channel 157 (MojaLove) - MultiChoice DSTV Premium.

Times Promo was aired:

1. January 24, 2018 – between 15:00 and 15:10;
2. January 24, 2018 – between 15:45 and 15:55;
3. January 27, 2018 – 19:27 (*I just saw it on TV*).

The promos for the new season of #PapGeld or “No Excuses Pay Your Paggeld”, which starts in February 2019, run throughout the day.

Notes:

On Wednesday, January 23, 2018 and on Saturday, February 9th 2019 around 18:55 I was called by a friend called me to indicate that they had seen images of myself, friends and family members on Channel #157 (MojaLove) of DSTV Premium, during a preview / promotion of the show “No Excuses Pay Your Paggeld” for their upcoming season. I have since seen these promo clips on television repeatedly from that date onwards. They images are currently still being broadcast on Channel #157 of DSTV Premium. MojaLove.

The images which were being broadcast on television on Channel #157, are of an illegal and unauthorized recording of the show, made when the crew and its presenter gate crashed my wedding on December 08, 2018. On this day during my wedding, Moss Makwati and his team entered the tent which was erected on private property at my home in Leondale (Roodekop), near Germiston, and started to confront me with unresearched and unfounded allegations.

The images were obtained illegally and without consent and without agreement from those filmed on that day. People were at the event to attend a wedding, and now their images are being shown on television. The images are shown without the faces of those who did not give consent being obscured – as an example: my uncle who is a Zionist minister, was recently approached by his congregation and questioned about the images shown on television.

Given the fact that the crew did not obtain any authorizations / agreement to film at the event, altercations broke out, and some violent scenes are shown in the images being broadcast by the show currently. This show breaks the BCCSA Code of Conduct in that it “glamorises violence or unlawful conduct”. This material which is being broadcast, is does not “amount to a bona fide scientific, documentary” nor is it “bona fide discussion, argument or opinion of public interest” – it is smut.

The BCCSA indicates that – “Broadcasting service licensees must exercise exceptional care and consideration in matters *involving the privacy, dignity and reputation of individuals*” – but that has not been achieved in this instance as the report purports and perpetuates unfounded information, which was not verified with the parties involved.

I’m hereby registering a complaint against the show "No Excuses Pay Your Paggeld" - Channel 157 (MojaLove) - MultiChoice DSTV Premium – and move therefore that all images being used henceforth be withdrawn, that the creators of the show **refrain from using the material for a full show broadcast** and that an apology be broadcast for a 3 month period with a greater frequency than the current broadcasts – all images and content on internet platforms are also henceforth to be removed and be replaced with an apology.”

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

“RE: RESPONSE TO NO EXCUSE PAY PAPPAGELD VIEWER COMPLAINT FROM MR MOJAPELA MAKAU

1. INTRODUCTION

1.1 We refer to the complaint from Mr Mojapela Makau regarding a promo of the programme. Paggeld, which featured his story.

1.2 The complainant objects to:

1.2.1 Alleged illegal and unauthorized recording occurred when the crew and at Mr Makau’s wedding on 8 December 2018.

- 1.2.2 The presenter, Mr Moss Makwati and his team entering the tent which was erected on private property at his home in Leondale (Roodekop), near Germiston.
 - 1.2.3 The presenter confronting the complainant with "unresearched and unfounded" allegations.
 - 1.2.4 The images being obtained illegally and without consent and without agreement from those filmed on that day.
 - 1.2.5 The images of the people who attended the wedding being shown on television.
 - 1.2.6 The images being shown without the faces of those who did not give consent being obscured – as an example: The complainant's Uncle who is a Zionist minister, was recently approached by his congregation and questioned about the images shown on television.
- 1.3 The complainant then requests for the following:
- 1.3.1 Given the fact that the crew: did not obtain any authorizations / agreement to film at the event, altercations broke out, and some violent scenes are shown in the images being broadcast by the show currently (sic):
 - 1.3.2 All images being used henceforth be withdrawn;
 - 1.3.3 That an apology be broadcast for a 3 month period with a greater frequency than the current broadcasts; and that
 - 1.3.4 All images and content on internet platforms are also henceforth to be removed and be replaced with an apology.

2. OUR RESPONSE

2.1 Preliminary Issue

- 2.1.1 It is important to note that the complaint is not based on the full programme but on a promo of the programme. We are of the view that the Commission is not in a position to adjudicate all the allegations raised by the complainant as these are not reflected in the promo.
- 2.1.2 It is therefore our submission that the issues raised in the complaint are premature. To the extent that the intention of the complainant's intention is to obtain a ruling from the BCCSA prohibiting the broadcast of the entire episode, we submit that the BCCSA does not have such powers.
- 2.1.3 Nevertheless, we are of the view that there is opportunity for the BCCSA to assist the parties to reach amicable resolution of the complaint. We have therefore decided to respond in detail to the complaint in the spirit of transparency and co-operation. We do so in the following paragraphs below.

2.2 Merits

- 2.2.1 The programme, "*No excuse: Pay PapGeld*" is a socially responsible that supports rights of children to maintenance by documenting and exposing people who are not honouring their obligations to pay child maintenance.

- 2.2.2 The episode that is subject of the promo will present a case of Mrs Makau who flew from Chicago, USA to take part in the show as a desperate attempt to get the maintenance money and spousal support that the complainant claims Mr Makau had failed to pay in terms of the divorce order. Mrs Makau provided prima facie evidence of the lack of payment.
- 2.2.3 When questioned as to why she approached "*No Excuse, Pay Papgeld*" programme, her reply was that she would do anything for her children and wanted to be able to say one day that there was not an avenue she didn't follow up on in trying to retrieve the maintenance and spousal support.
- 2.2.4 With regard to Mr Makau's assertion of unlawful entry on private property, we respond as follows:
- 2.2.4.1 The channel and TV crew we were not aware that Mr Makau's wedding celebration was on-going. The intention was to go to his home to request for an interview and offer him a right of reply.
- 2.2.4.2 We acknowledge that the show presenter entered the tent, the crew however did not and stayed on the public road.
- 2.2.4.3 The show director made the on-site decision to send the presenter into the tent because he saw Mr Makau sitting to one side on his own.
- 2.2.4.4 On the show footage its clear that once Mr Makau understands what is occurring, he guides our presenter out of the tent, speaks to him in a soft voice and attempts to downplay the issue. Mr Makau says that the timing isn't right for this kind of conversation. And what we inferred from this statement that he was amenable to having this conversation at another time.
- 2.2.4.5 Yet as the situation seems to come to a resolution (i.e. this being the wrong time) the new Mrs Makau enters the conversation and actively turns it into a heated spectacle.
- 2.3 With regard to Mr Makau's assertion of lack of consent, we respond as follows:
- 2.3.1 We submit that the presenter received consent when he approached Mr Makau in the tent, with the crew in plain view and informed him that the crew were there to give him a right of reply.
- 2.3.2 Mr Makau infers in his talking that while the timing was wrong, that he would be willing to discuss it at the right time.
- 2.4 With regard to Mr Makau's assertion of the use of images on channel promo material for which no consent was given. As a channel we acknowledge that we failed to hide the images of the other people visible in the footage.
- 2.4.1 We have removed the promo off air and have blurred out the imagery that makes the others recognizable. We have not returned the promo to screen as yet.
- 2.4.2 We apologise for this oversight.
- 2.5 With regard to Mr Makau's statement that altercations broke out, and some violent

scenes shown due to non-consent:

- 2.5.1 Its clear on the footage that altercations and violence was initiated by the new Mrs Makau and others with no reciprocation offered by our presenter or crew. They retreated.
- 2.5.2 Our presenter tried to diffuse the situation but when he failed, ran away. The crew also ran away. Therefore the undignified footage is due to the response of Mr Makau's wife and others (without ever asking for the full information or attempting to have a rational conversation)
- 2.6 Then finally with regard to Mr Makau's request for the removal of all images including the broadcast of an apology for a 3 month period with a greater frequency than the current broadcasts, as well as the removal of all images and content on internet platforms and be replaced with an apology:
 - 2.6.1 As indicated in paragraph 2.1 above, the complaint is based on a promo and we submit that the Commission can only make a ruling in respect of the promo only.
 - 2.6.2 The channel has temporarily removed the promo pending the ruling of the Commission.
 - 2.6.3 We also would like to offer Mr Makua another opportunity for an interview to provide his full right of reply to Ms Swartwater's assertions (even though Mrs Swartwater wouldn't have an opportunity to address him, as what we normally do to ensure both parties' information/opinions are accurately represented)
 - 2.6.4 We respectfully put forward the positioning of the show: mediating on the behalf to women or men who cannot find ex-partners who have reneged on maintenance and spousal support payments.”

EVALUATION

- [4] At the Tribunal hearing on 27 February 2019 we watched the promo complained about and listened to the arguments by the Complainant’s representative and by the Respondent broadcaster. At the closure of arguments, the Broadcaster informed the Tribunal that it intends to offer the Complainant a settlement. We welcomed this and indicated that we will not proceed with writing the judgment in this case until such time as we have been informed by the parties that such settlement could not be reached. We agreed with the parties that 6 March 2019 should be the return date for such settlement to be concluded, failure which the Registrar of the BCCSA should be informed that no settlement could be reached. The Registrar was informed on 8 March by B Mzamo Incorporated, the attorneys for the Complainant, that no such settlement could be reached.

- [5] This complaint concerns the broadcasting of a promotion (known colloquially as a promo) of a programme called “*No Excuse: Pay Papgeld*”. According to the Broadcaster, this programme is a socially responsible programme that supports the rights of children to maintenance by documenting and exposing people who are not honouring their obligations to pay child maintenance. At the hearing we were informed that the programme has been running for more than a year and that 59 episodes had been flighted so far.
- [6] In the complaint lodged with the BCCSA, the Complainant asks for the following in respect of this particular promo:
- 6.1 that all images used in the promo be withdrawn from airing;
 - 6.2 that the broadcaster refrains from using the material for a full show broadcast;
 - 6.3 an apology being broadcast for 3 months;
 - 6.4 that all images and content on Internet platforms be removed and replaced by an apology.

In its response to the complaint, the Broadcaster stated (in paragraph 2.4 thereof) that it had removed the promo off air and apologised for the oversight of not having hidden the images of other people (meaning the guests at the wedding celebration).

- [7] At the hearing, counsel for the Complainant did not elaborate on the requests by the Complainant but stressed the point that we should protect the dignity and privacy of the Complainant and that we should penalise the Broadcaster for an unethical and unlawful broadcast. As far as the Complainant’s requests are concerned, we need to emphasise that this Tribunal cannot order a broadcaster to refrain from using material in a future broadcast. That would amount to censorship which is not allowed in a democracy like ours where freedom of expression is guaranteed in the Constitution. We cannot order that content be removed from Internet platforms, as the BCCSA has no jurisdiction over what is published on the Internet.

[8] This complaint is limited to what was broadcast in a promo. No specific provision is made in the Code of Conduct for Subscription Broadcasting Service Licensees in the case of the broadcasting of promos. Broadcasting of promos should thus be dealt with in the same way as ordinary broadcasts, although we have in the past stated in our judgments that because of the fleeting nature of promos (lasting usually just a few seconds) it is normally not possible to judge the context in which such material is broadcast. However, following the principle that each complaint should be judged on its own merits, we find that we can adjudicate this promo for the following reasons: The programme “No Excuse: Pay Paggeld” has been on air for more than a year. Regular viewers of the programme, upon seeing the promo, would immediately realise that the next episode would be dealing with a parent who has not paid maintenance for his children, because that is the object of this series. Furthermore, the Complainant could be clearly identified during the few seconds that the promo was broadcast. In the minds of the reasonable viewers of the promo, including the family, friends and colleagues of the Complainant who could identify him, the programme following the promo will be one in which the Complainant is exposed as a person who shirked his duty to support his children. In our society this is a morally reprehensible matter.

[9] In the promo there are short excerpts of the confrontation between the show’s presenter, Mr Moss Makwati, and the Complainant. A marquee tent can be seen in the background. We were informed that the Complainant had erected this tent in the garden of his parent’s home with the intention of celebrating his African customary wedding with his (second) wife. Further shots in the promo show that the confrontation turned violent with the wedding guests joining the Complainant in an attempt to chase the TV crew, who accompanied the presenter, away from the premises. It then becomes a free for all with the crew fleeing while being assaulted by the guests – pure sensational television material and very undignified. It is clear from the promo that the Complainant could be identified from the visuals and that the team from the Broadcaster entered private premises where a wedding reception was taking place. The argument by the Broadcaster that consent by the Complainant to an interview on camera could be inferred from what the Complainant said when approached by the presenter, was countered by the

representative of the Complainant. He stressed that the legal requirement for consent is that the giver of consent must be informed and that consent must be expressly given. In paragraph 2.2.4.4 of the Broadcaster's written response, it is stated that "*Mr Makau says that the timing isn't right for this kind of conversation. And what we inferred from this statement that he was amenable to having this conversation at another time.*" Logic dictates that what was amenable for the Complainant at another time, means that he was not amenable to an interview on camera at his wedding reception. It therefore does not make sense to conclude that consent to infringe his right to privacy could be inferred from what the Complainant said when confronted by the presenter.

- [10] At the hearing, the representatives for the Broadcaster argued that the Tribunal cannot judge the promo in terms of Clause 28 of the Code. Clause 28 consists of various sections. The first deals with news (Clause 28.1), which the promo obviously was not. The second deals with the broadcast of comment on and criticism of actions or events of public importance (Clause 28.2). This promo lacked context and was of too short duration to be judged in terms of this provision. The third refers to a programme in which controversial issues of public importance are discussed (Clause 28.3). This would exclude promos because they do not fall into the category of programmes. As far as these sections are concerned, we must agree with the Broadcaster. The fourth section refers to privacy and dignity of individuals insofar as both news and comment are concerned (Clause 28.4).
- [11] The first reaction, upon reading Clause 28.4, is that the privacy and dignity of individuals are only protected in the broadcasting of news and when comment on and criticism of actions or events of public importance are being broadcast. Does that mean that in all other types of broadcasting, the privacy and dignity of individuals are not protected? If true, that would leave any reasonable person with a sense of injustice. It would also be discriminatory between persons whose privacy and dignity are being violated in news and comment programmes and persons whose privacy and dignity are being violated in other types of broadcasting, including promos. The question can be asked: "What is the purpose of Clause 28.4"? It is surely to protect the privacy and dignity of individuals

against broadcasting of an intrusive and defamatory nature. That is why broadcasters must exercise exceptional care and consideration in matters involving the private lives, private concerns and dignity of individuals. This means that a higher standard of care than that of the reasonable person or the *bonus paterfamilias* (reasonable, careful person) of our common law must be exercised by the broadcaster. If such duty rests on the broadcaster, is it limited to the broadcasting of news and comment? That cannot be so because the main purpose of this clause is to protect privacy and dignity. We need therefore to interpret this clause in terms of the legal rules of interpretation of statutes. The Code is a form of subordinate legislation which is subject to the same rules of interpretation.

- [12] The point of departure in the interpretation of the meaning of Clause 28.4, is to follow either the literal mode of interpretation or the teleological mode. In the first mode, if there is no ambiguity in the wording of the text, there is no room for applying the rules of interpretation and the words used in the text have their ordinary meaning. When following the teleological mode, presumptions and rules of interpretation should be creatively applied to determine the intent of the legislature, or, in this case, the intent of the authors of the Code. This is the mode being advanced by Professor George Devenish in his book *Interpretation of Statutes*¹ and he quotes with approval from the judgment in *Dadoo Ltd v Krugersdorp Municipality*² as follows:

It is a wholesome rule of our law which requires a strict construction to be placed upon statutory provisions which interfere with elementary rights. And it should be applied not only in interpreting a doubtful phrase, but in ascertaining the intent of the law as a whole.

In applying this teleological mode of interpretation to the clause before us, we have come to the following conclusion: Although we cannot say that the wording of this clause is ambiguous, it is clear that the intention of the authors of the Code was to protect two

¹ Juta, 1992, p163ff.

² 1920 AD 530 at 552.

basic rights of individuals against broadcasters, namely the right to privacy (see section 14 of the Constitution of South Africa) and to dignity (protected in section 10 of the Constitution). If this is true, and we have no doubt that it is, it means that the authors have imposed their own limitation on the protection of this right by confining it to the broadcasting of news and comment only. Why does Clause 28.4 not refer to other types of broadcasting or to all broadcasting? A limitation of basic rights is only justified if, in the words of section 36 of the Constitution, such limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. We think there is no justification for this limitation. Applied to the facts before us, we find that the Broadcaster cannot argue that it did not have to exercise exceptional care and consideration in the matter involving the private life and dignity of the Complainant because it was broadcasting a promo. As described above, the private life and dignity of the Complainant was indeed intruded upon.

- [13] Another theory of interpretation is being offered by Professor Lourens du Plessis in his book *The Interpretation of Statutes*³ where he discusses inclusive interpretation of statutes and says the following:

This form of extensive interpretation is also known as interpretation by implication, and the (logical) interpretation may follow from one of several considerations.

He describes the one known as *ex consequentibus* which applies, according to us, to the clause of the Code under consideration. He continues:

Where an enactment expressly prohibits a certain result, it also prohibits everything which may lead to that result by implication. Similarly, from a “positive” point of view: where an enactment expressly permits achieving a certain result, it also permits everything necessary to achieve that result by implication (and it also prohibits everything which may impede the permitted result).

³ Butterworths 1986 at p156-157.

From this we conclude that the authors of the Code imposed a duty on broadcasters to exercise exceptional care so as not to violate the basic rights to privacy and dignity of individuals in news and comment broadcasts. *Ex consequentibus*, or following logically from this, we interpret this duty to mean that broadcasters must also exercise exceptional care so as not to violate the rights to privacy and dignity of individuals in other broadcasts.

[14] A literal interpretation of Clause 28.4, on the other hand, would lead one to conclude that there is no need to enquire into the purpose of the clause, but just to accept that the duty to exercise exceptional care rests on broadcasters only in the broadcasting of news and comment programmes. This interpretation will not only result in discrimination against individuals whose rights have been violated in broadcasts other than those mentioned in clause 28.4, but it would be unfair and unjust to protect the rights of individuals only in the mentioned broadcasts but not in other types of broadcast.

[15] A further point is that it appears that the two Codes of Conduct that we apply differ on the subject of the protection of privacy and dignity. In this case we are dealing with the Code of Conduct for Subscription Broadcasting Service Licensees and Clause 28.4 thereof which provides:

Insofar as both news and comment are concerned, broadcasting licensees must exercise exceptional care and consideration in matters involving the private lives, private concerns and dignity of individuals, bearing in mind that the rights to privacy and dignity may be overridden by a legitimate public interest.

Whereas Clause 15 of the Free-to-Air Code of Conduct for Broadcasting Service Licensees determines:

Broadcasting service licensees must exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that the said rights may be overridden by a legitimate public interest.

Although the first mentioned Code refers to private concerns which the second mentioned does not, and although the second mentioned Code protects reputation, which the first mentioned Code does not, it is clear that both the Codes strive to protect the privacy and dignity of individuals against broadcasters. Reputation has everything to do with dignity. What is not clear, is why did the drafters of the two Codes find it necessary to limit the protection in the Subscription Broadcasting Code to the broadcasting of news and comment, while in the case of the Free-to-Air Code there is no such limitation. We cannot find justification for such limitation in the first mentioned Code and we think it is discriminatory. Du Plessis⁴ discusses the reasonable test in the interpretation of delegated legislation, like the Codes, and states:

Reasonableness is also the relevant test applied with respect to delegated legislation which imposes burdens or provides for penalties, and particularly, in the case of delegated enactments which sanction discrimination.

Based on the principle of interpretation that in such a case the interpretation that has the least impact on the basic rights of individuals, is the correct one, we find that clause 28.4 should not be limited.

- [16] From the written and other evidence before us, it is clear that the Complainant's private life and private concerns were severely intruded upon by the presenter and filming crew of the programme when they barged into the wedding reception of the Complainant. The Complainant could be recognised on the excerpts broadcast in the promo, however fleeting. It appears that the wedding event was completely ruined by the actions of the broadcasting team. This caused serious humiliation to the Complainant. Counsel for the Complainant prepared heads of argument wherein he dealt thoroughly with the privacy of the Complainant being infringed. We agree with his arguments on the infringement of privacy of the Complainant. We also accept that the Complainant did not give his express and informed consent to be filmed, as required by law, because he was under duress. The last question that remains to be addressed is whether the exception provided

⁴ Op. cit. p87.

for in clause 28.4 swings the result in favour of the Broadcaster. This will be when a legitimate public interest overrides the individual's right to privacy and dignity.

- [17] Counsel for the Complainant quoted as authority the case of *Tshabalala-Msimang v Makhanya*⁵ wherein the nature of public interest was discussed, and some examples of public interest were given. These include current news and events concerning the lives of public persons like politicians and public officials, matters which have a direct effect on civic life, such as legislative enactments and financial policy, and facts and opinions without which a democratic electorate cannot make responsible judgments (like load shedding!). A quotation to which we have been referred seems to be very apt in deciding this point of public interest. It is by Baroness Hale of Richmond of the House of Lords in England in the case of *Jameel v Wall Street Journal Europe Sprl*⁶ where she states:

*The public only have a right to be told if two conditions are fulfilled. First, there must be a real public interest in communicating and receiving the information. This is, as we all know, very different from saying that it is information which interests the public – the most vapid tittle-tattle about the activities of footballers' wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it.*⁷

This was a case in which damages were claimed for defamation. The second condition, mentioned by Baroness Hale, is not applicable to this point.

- [18] The exception mentioned in Clause 28.4 only comes into play where there is a legitimate public interest in the private life and private concern of an individual. No valid arguments have been raised by the Broadcaster as to why we should decide that a legitimate public interest overrides the rights to privacy and dignity of the Complainant. None of the requirements for a legitimate public interest are present in this case. No evidence was produced that the Complainant is a public figure. The closest the Broadcaster could come

⁵ [2007] ZAGPHC 161 and 2008 (6) SA 102 (W).

⁶ [2007] 1 AC 359.

⁷ At 147.

to the requirement of legitimate public interest, was that the programme, of which the promo is a forerunner, has the morally laudable objective to expose recalcitrant parents (mainly fathers) who shirk their duty to pay maintenance for their children. The argument of the promotion of the rights of such children is further added by the Broadcaster to bring the moral argument to a higher level. The answer to this argument is that in a democratic state, like ours, the courts are the upper guardians of children and the State has put in place a system of Maintenance Courts to ensure that the rights of children to maintenance are being enforced. This is the second complaint of this nature lodged with the BCCSA the last few months where a programme (or a promo of such a programme) is broadcast as entertainment while the dispute between the parents has been or is being resolved by the Maintenance Court. It is contentious whether this form of entertainment protects the rights of children better than referring the dispute to the Maintenance Court. Be that as it may, our conclusion is that the Complainant is not a public figure and although the public may have an interest in the private lives of men who allegedly do not pay maintenance or sufficient maintenance for their children, in this instance there is no proof of the public having a legitimate public interest in the private affairs of the Complainant. Our finding is that the Broadcaster did not exercise exceptional care when it broadcasted this promo in which the Complainant could be clearly identified. **The result is that the right of the Complainant to privacy and dignity was violated with this promo.**

- [19] As for sanction, the parties at the hearing addressed us provisionally on mitigation and aggravation of sanction respectively. We do not accept the argument by the Broadcaster that it granted a right to reply to the Complainant during the confrontation at the wedding reception, and that it thus complied with the provision in the Code. As mentioned in paragraph [9] above, express and informed consent to an interview was required, but the Complainant could not give this in the embarrassing situation he found himself. There was an outright violation of the Complainant's right to privacy and dignity and the sanction should be commensurate with this violation.

In the result, we find that the Broadcaster contravened Clause 28.4 of the Code by not exercising exceptional care when dealing with the right to privacy and dignity of the Complainant. A fine of R20 000 is imposed which must be paid to the BCCSA at the latest on 15 April 2019. The complaint is therefore upheld.



**PROF HENNING VILJOEN
CHAIRPERSON**

Deputy Chairperson Makeketa and Commissioner Fakude concurred in the above judgment.