



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

**ADJUDICATION NO: 23/A/2019**

**NAME OF PROGRAMMES: FRESH BREAKFAST**

**DATE AND TIME OF BROADCAST: 20 MAY 2019 BETWEEN 6:30 AND 7:00**

**BROADCASTER: SABC METRO FM**

**COMPLAINANT: MOKWA**

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### **COMPLAINT**

**Complaint that the broadcaster aired inappropriate language which was offensive to listeners and not suitable for children.**

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### **APPLICABLE CLAUSES**

**The following clauses of the BCCSA's Free-To-Air Code of conduct for broadcasting service licensees:**

#### **6. Children**

- (1) Broadcasting service licensees must not broadcast material which is harmful or disturbing to children at times when a large number of children are likely to be part of the audience.**
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## ADJUDICATION

[1] A complaint was lodged with the BCCSA against the SABC's Metro FM (*hereinafter referred to as "the Broadcaster"*) for its broadcast on the 20<sup>th</sup> of May 2019. The Complainant believes that the host of the show used offensive language at a time when a large number of children were part of the audience. The Complainant also feels that the language used by the host was not only inappropriate for children but also offensive to listeners.

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

"In response to a listener's tweet regarding Khanya's matter DJ Fresh used a language that's not acceptable, vulgar that goes against BCCSA's code of conduct. He used a word MSONO which is vulgar and cannot be used in public unless a person lacks respect, he also said people should stop twitting from their ARSES, this I also found derogatory and cannot be used in public. I know for the fact that should one call Metro FM or any radio station and uses such words a person will be cautioned at once or their call will be terminated. So why should the presenters be allowed to use such words. I tried engaging DJ Fresh to withdraw his derogatory remarks and the level of arrogance he displayed confirmed what I was told. I was told that people like DJ Fresh and other "big" personalities cannot be touched by BCCSA because they are scared of them or SABC pay their way not to lose revenue if these guys are suspended. I hope this is not true and I am not wasting my time by writing to you to complain. Find attached is DJ Fresh's reaction when I tried engaging him where I got an idea that he knows or thinks you will do nothing to him.

1. I believe it was between 6:45-7:00 or from 6:30-7:00
2. The discussion was about Khanya's dramatic arrest
3. A listener sent a tweet accusing Fresh of being biased and in response Fresh became emotional and used the words as follows "People should stop talking MSUNERY" meaning MSONO (He cannot easily use this word in a family setting, we know what the word means). He continued by saying "People should stop twitting from their ARSES". This he said to retaliate forgetting that the discussion was not only between just the two of them but that other people are listening, children included who have been exposed to such vulgar language. This was before he could say he was all along on the side of the police since the discussion, this was going to suffice but he felt pushed to use vulgar language in retaliation. I feel the platform was used wrongly as vulgar was used. He should know how to control his emotions, we are customers as listeners and we should be respected."

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

**"BCCSA COMPLAINT: DANIEL MOKWA – METRO FM – FRESH BREAKFAST– 20.05.2019 – 006:00**

In respect of the above-mentioned complaint, please find our comments as follows:

1. As an SABC radio station and public broadcaster, Metro FM, under no circumstances will intentionally present content to harm its audience.
2. The language used by the presenter was not the direct words which the complainant mentioned in their complaint. In case of the term 'msunery' , whilst not an appropriate word to use on air – the word 'msunu' as stated by the complainant was not used by the presenter.
3. With regards to using the phrase 'tweeting from your arses', it is unfortunate that it was used by the presenter during that time in the heat of the moment. We sheepishly accept that the presenter was overtaken by emotions to rationally respond to the comment made by the listener against him. As an experienced presenter, we anticipate that the incident could have been avoided and for that we sincerely apologise to the complainant.
4. The station has since engaged the presenter and has committed to using clean language on air.
5. The SABC would like to distance itself from insinuations by the complainant that there are certain employees of the SABC who are untouchables. The SABC has for decades adhered to the BCCSA Code of conduct and has taken action against those who contravene it.
6. We wish to apologise to the complainant for the inconvenience caused and thank them for their positive engagement with us. We urge them to continue supporting Metro FM."
- 7.

**[3] The Complainant replied as follows:**

"I acknowledge your response and your efforts, thank you. Let me raise my follow up matters.

1. SABC acknowledges that it does not support usage of harmful language or content and this means they will admit fault if proven.
2. I am putting it on record that MSUNERY is used in a place of MSUNU/MOSONO and I will give SABC time to go and find out for themselves, I do not wanna be taken for someone who is not informed. We know what is this and if we have to take this further I am more than prepared to prove this
3. There is an admittance from SABC that inappropriate language was used and there should be consequences and I leave that to SABC and BCCSA to do what they are supposed to do based on their rules and guidelines
4. The presenter has been engaged and he has committed to use clean language going forth. What happens with the usage of unclean language on the date mentioned????????? What does SABC and BCCSA supposed to do based on rules in place when a presenter uses inappropriate language? I can simply refer you to the BCCSA's ad that's aired by SABC about such contravention. We do not have to go and open books because even a lay person is exposed to that advert. So the question is what happens if SABC goes against that? They will just apologise and we should move on? No! I don't think so. I will hear from BCCSA about the action, alternatively the ad must be pulled off and apology be issued that the ad was just a waste of time and we should have not been exposed to it because nothing will happen after we have picked up the contraventions.
5. I also would like to raise that I have picked up that the insinuation that some presenters could be enjoying immunity and they know it could be true. This I say based on the response I got from the said presenter when I engaged him to withdraw his statements. This

also displayed some disrespect on me as listener and a funder of the institution which is SABC, I felt disrespected and ridiculed for raising what you have also found to be wrong. You engaged the presenter and he acknowledged that he was out of line hence he promised to use clean language but on the other hand he dared me and told me to go report him. I ask myself why didn't he say DO WHAT YOU HAVE TO DO the same way he told me. What is the difference between me and SABC because I am also his employer as funder of SABC through my tax. The SABC should continue even in this decade to take action against anyone who contravenes.

6. Apology means the fault is found and things could have been handled differently, if the punishment was jail, it could have been effected. I am continuing to listen to Metro FM including the show in question. I know for a fact if I can call Metro FM or any SABC station shows and use such language even though there is a warning that our views are not that of SABC, whoever the presenter is they will warn me and cut my call short because the language is not allowed in public. I shall wait for your response.”

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

- “1. Kindly do note that we value the complainant as a listener and that is why the station has communicated that it will go through our internal processes to address the complaint.
2. Please do note that as per our initial response, we are in no way making assumptions that he is not an informed person. What we were trying to communicate is that, the word used on air was ‘Msunery’ and not ‘Msunu’ which he implied that it means or was used in place of the latter word.
3. The SABC has internal processes which we will have to follow in a matter of this nature – which we don’t necessarily have to make public as it relates to issues of discipline and our code of conduct.
4. We have accepted and reiterated that a language like ‘twitting out of your ass’ is not acceptable and we will take the internal measures opened to us to deal with this case.
5. We are more than willing to even meet up with the complainant in person to further discuss this matter.

Please accept our apologies again and be sure that the station is taking care of this internally.”

## **EVALUATION**

- [6] I have listened to the clip in question. The host was reading out twitter comments on an incident that took place between the Johannesburg Metropolitan Police and a famous TV personality. One of the twitter comments alleged that the host of the show is friends with the TV personality and helps in covering up what is alleged to have been unlawful conduct by the TV personality which led to the confrontation with the police. It is to this comment that the host responded by stating that the author of the comment was talking “*msunery*” and that people must stop texting from their “arses”. The word “*msunery*” is

not a genuine word. The Complainant derived from this that the host indirectly meant “*umsunu*” which is a Nguni word meaning an anus. The host sounded perplexed by the allegation made against him in the tweet and his immediate reaction was to use the word “*msunery*”. It is highly probable that a perceptive listener would deduce the intended meaning to be “*umsunu*”, especially considering the context within which the word was used. However, without paying too much attention, an ordinary listener would presume that the word is mere jargon. It is therefore necessary to consider the reasonable person test in this regard. This is an objective test. The reasonable listener in this case is one with ordinary sensibilities, is objective and is familiar with the Nguni language (not overlooking the possibility that the word bears the same meaning in non-Nguni languages). On hearing the specific word of “*msunery*” it is implausible to declare that the host said “*umsunu*”. For an ordinary listener with regular sensibilities it may not be concluded that the host meant “*umsunu*”. The standard can thus not be one of a few selected listeners who are familiar with the word “*umsunu*” and its innuendos. It must be objectively tested taking into account the diversity of the Broadcaster’s audience. In addition, it is “*msunery*” and not “*umsunu*” that was broadcast; therefore the broadcast may not be reconstructed. In the event that children were part of the audience, children normally take words as they are said without adding connotations. Depending on the age and level of intelligence of the child, the word “*msunery*” could be considered to be jargon or may be a cause for curiosity. I therefore find that the Broadcaster did not contravene Clause 6 of the Code in this regard. The Complainant stated that he was offended by the language used by the host, however, Clause 6 of the Code does not deal with the dignity of individuals. Hence the Broadcaster cannot be found to have contravened the Code in this regard.

- [7] With regards to the second comment the host made, namely that people should stop texting from their arses; this was said after there was some interruption by the co-hosts between the first contentious word and this comment the host later made. This is the comment that created the casual link between the host’s utterances and the resultant offensive language. An arse refers to the anus / buttocks, which bears the same meaning

as “*umsunu*” (not “*msunery*”). The word *arse* is a common word which is often considered to be slang and vulgar language. Considered in context, this statement was distasteful and amounted to vulgar language. It does not require semantics. The average school start time for children in South Africa is 7:30 am and the broadcast was between 6:30am and 7am. This is a time when a large number of children are likely to be part of the audience as they are on their way to school and are likely to be listening to the radio in their various modes of transport. The use of this word by the host was thus inappropriate and not suitable for child consumption. I therefore find that the Broadcaster contravened Clause 6 of the Code in this regard.

[8] The Broadcaster advanced an apology to the Complainant after satisfying itself with the contents of the complaint. The Broadcaster committed itself to taking internal disciplinary action against the host. The Broadcaster also confirmed that the host has undertaken to use appropriate language going forward. The Complainant is not satisfied with the stance taken by the Broadcaster and believes that a more punitive approach must be taken. The purpose of a sanction is not only restitution but also deterrence. What was broadcast cannot be restored. A sanction, for purposes of this adjudication will therefore have to comply with the general principles of law and fairness. In imposing a sanction, what must be considered is reasonableness and fairness of the sanction taking into account circumstances of each case.<sup>1</sup> In this case, the Broadcaster has alluded that the host is a seasoned host and therefore is aware of the requisites of broadcasting. During the broadcast, the host sounded surprised and immediately reacted to this emotion. The host’s utterances however lacked intention although negligent. The host did not intend to offend listeners nor cause harm to children who could have been part of the audience. The words were however distasteful and as an experienced presenter, the host ought to have had more control of his emotions.

[9] The Complainant has alleged that there is collusion between the BCCSA, the host and the Broadcaster to protect the Broadcaster. Further that the BCCSA is afraid of the

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<sup>1</sup> Sidumo v Rustenburg Platinum Mines Ltd 2007 BLLR 1097 (CC).

Broadcaster. It is not clear from the complaint what the source of this information is. The BCCSA considers each case on its own merits and an objective approach is applied in line with the Code. The BCCSA's Codes of conduct and previous rulings are accessible to the public.

**After considering all the facts before me, I find that the Broadcaster has contravened the Code to the extent set out in paragraph 7 above. The complaint is accordingly upheld.**

**[10] The Broadcaster and the Complainant were requested to each make submissions in aggravation and mitigation of a sanction.**

**Complainant: "Submission in aggravation and mitigation on DJ Fresh case"**

**1. Introduction**

1. I need to state that I do not have personal vendetta against DJ Fresh
2. The complaint was based on principle and nothing else
3. I have always supported and followed his good work
4. I have always applauded and broadcasted some of the good works he did on the same show whenever I noticed the gestures
5. I regard him as a role model to many young people who look up to him
6. The reason why I was able to pick this up is because I am an avid client of the show
7. The complaint I laid was not even about me and cannot be used to elevate my profile

**2. Aggravation**

1. I regard the show as a family show where all ages listens including primary school going kids
2. The show even has a slot for primary school ages who could be listening at the time
3. Those who look up to DJ Fresh as a role model might copy the language used and use it thinking it is okay because their role model uses it
4. The platform that was used is a public platform where there are rules hence we have Broadcasting Act and a body like BCCSA
5. After I have I have picked up the offence I did the following in an attempt to make sure that the wrong is corrected to avoid taking alternative route
  - 5.1.1. I notified Metro FM through a tweet that DJ Fresh instead responded to
  - 5.1.2. He did not acknowledge that what he did was in fact wrong
  - 5.1.3. I was challenged publicly
  - 5.1.4. I was also ridiculed for standing against a wrong thing
  - 5.1.5. Fans continued to attack me because of the influence and love for DJ Fresh.
6. Should have DJ Fresh acknowledged his mistake and apologized then, an apology would have sufficed and I could have not taken the matter any further as the intention was just to correct.

**3. Mitigation**

1. The intention was not to get DJ Fresh fired or even to teach him a lesson but was to correct the wrong he committed and caution further possibilities by others
2. I also intended to raise an awareness around issues of accountability from public figures, they need to lead by example and be held accountable when they contravene
3. As far as I am concerned as a complainant I believe the above have partly been achieved as the public is aware that the public figures/leaders can be made to account
4. I also believe that DJ Fresh have been “punished” already if he deserved a punishment
5. I recommend that the following be considered
  - 5.1. He be reprimanded
  - 5.2. He offers an apology both on air and on social media where he humiliated me
  - 5.3. Metro FM to offer slots to promote public watchdogs to make listeners aware that public servants and anyone can be held accountable and where to seek help and support Submitted”

**Broadcaster: SABC’S RESPONSE ON A SANCTION RELATING TO FRESH BREAKFAST ON METRO FM**

In respect of the above-mentioned matter, the SABC wishes to wishes to comment as follows:

1. The SABC welcomes the findings of the adjudication process by the BCCSA.
2. As previously communicated in our initial response, the SABC apologizes for the contravention of clause 6 of the BCCSA code relating to the use of disturbing and grossly offensive language during the said broadcast.
3. Since the said broadcast, the SABC has suffered considerable negative publicity in both mainstream and social media environments regarding this particular matter. The SABC and its sub-brand, Metro FM, have further suffered severe injurious publicity as the result of the matter being in the public space.
4. The article below is one of many that have been written exemplifying how our competency in dealing with the matter was questioned and stringently scrutinized, adding to the humiliation already suffered by the public broadcaster:
 

<https://thediaonline.co.za/2019/06/the-dj-fresh-sabc-situation-what-is-going-on/>
5. This incident has caused irreversible, adverse and negative brand image which has resulted in embarrassment and humiliation to the brand.
6. Following the incident, the SABC took a decision to not include the Presenter, Mr. Thato Sikwane (also known as DJFresh) in its schedule on Metro FM, as part of its internal remedial processes.

It is our humble submission that the SABC has suffered serious humiliation subsequent to this complaint being lodged with the commission. The appropriate sanction that should be meted is a reprimand.”

**Sanction**

[11] I have considered submissions made by the Complainant and the Broadcaster. It is common cause that the matter has attracted a lot of publicity. It has also invited a lot of

external commentary into the Broadcaster's affairs. It is noted that the host in question is facing internal disciplinary procedure which has led to his exclusion from the Broadcaster's schedule. The BCCSA notes further that the Complainant feels that he was humiliated on social media by the host as well as the host's fans when he approached the host on this matter. The BCCSA does not have jurisdiction over social media platforms. I therefore can only consider a sanction based on what was broadcast on the show in question. I further cannot consider the Complainant's humiliation as a factor because the complaint was upheld based on the contravention of clause 6 of the Code which does not deal with the dignity of individuals.

[12] The BCCSA may not prescribe to the Broadcaster what the Broadcaster may include in its programmes. This amounts to censorship and interference with editorial discretion. If the Broadcaster believes it is necessary to create a slot to enlighten the public about complaints authorities against public broadcasters, it may do so, it is not an order of the BCCSA. After considering all the facts of the matter, it is noted that the host and the Broadcaster have been subjected to public scrutiny and humiliation. The host is also facing internal disciplinary action. As such, the matter does not require any further publicity than is already the case. In line with the principle of double jeopardy<sup>2</sup>, the appropriate sanction is a reprimand.

**The Broadcaster is therefore reprimanded for its contravention of the Code as set out above.**



**MS. NOKUBONGA FAKUDE  
COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION**

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<sup>2</sup> One may not be punished multiple times for the same offence.