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

CASE NO: 11/2019

JUDGMENT DATE: 19 JUNE 2019

In the matter between:

RECYCLING AND ECONOMIC DEVELOPMENT INITIATIVE OF SOUTH AFRICA (REDISA) **COMPLAINANT**

and

THE ELECTRONIC MULTIMEDIA NETWORK LIMITED trading as CARTE BLANCHE **RESPONDENT**

CHAIRPERSON'S RULING ON WHETHER COMPLAINANT MAY PROCEED WITH COMPLAINT

BACKGROUND

This complaint has a long history. The first broadcast by Carte Blanche on REDISA, which resulted in a complaint, was on 15 November 2015. Before this complaint came before a BCCSA Tribunal, the Complainant (being REDISA and its CEO, Mr Erdmann) applied to the High Court to have Clause 3.9 of the BCCSA Procedure declared unconstitutional. They succeeded in the application, but then on 27 November 2016 Carte Blanche broadcast a second programme on REDISA. This resulted in a second complaint being lodged with the BCCSA by REDISA. The matter was further delayed when the Respondent (Broadcaster) applied to the BCCSA for an order that the Complainant disclose certain documents. This point has not been resolved. After agreement between the parties that the two complaints will

be combined in one hearing, news was received that REDISA was provisionally liquidated. This put the complaints before the BCCSA on hold. Thereafter REDISA was finally liquidated. REDISA appealed this final order and succeeded in its appeal. After this, REDISSA gave notice of its intention to proceed with its complaints before the BCCSA. Carte Blanche is opposing this. This is the matter that I now have to decide.

RULING

[1] I had a discussion with the legal representatives of both parties on 17 April 2019. I encouraged them to find common ground on this matter which, because of the long delay, has become a problem. They could not come to any settlement and I requested them to submit written arguments supporting and opposing, respectively, the application to proceed with the complaints before a Tribunal of the BCCSA.

[2] The Complainant's attorney submitted arguments on 29 January, 25 February and 4 March 2019 in support of their stance that the Complainant's reputation has been damaged by the broadcasts of 15 November 2015 and 27 November 2016 respectively. According to them, both the company and the CEO of the company suffered damages. The Complainant argued that they were entitled to a hearing, despite the long delay, and that justice requires that they should be allowed to proceed with their complaint in a tribunal hearing of the BCCSA. They argued that they were not responsible for the delays in this matter. According to the Complainant they exercised their constitutional rights when they applied to the High Court to have Clause 3.9 of the BCCSA Procedure declared unconstitutional. The further delay when REDISA was liquidated and the Complainant was obliged to appeal the final liquidation order, was also not of the Complainants' making because they were only defending their rights. The Complainants' arguments centre around the lawfullness of the continuation of the complaints procedure.

[3] Respondent has filed 10 pages of argument with annexures to prove that it will not be in the interest of justice to proceed with the complaints procedure three and a half years and two and a half years, respectively, after the programmes were broadcasts. The Respondent argued that the Constitution of the Broadcasting Complaints Commission set as its goal that complaints against broadcasters should be resolved as soon as possible. In this regard they rely on article 2 of the Constitution which reads:

> *The aims and objectives of the BCCSA are to ensure the adherence to high standards in broadcasting and to achieve a speedy and cost-effective settlement of complaints against full members of NAB who have submitted themselves to the jurisdiction of the BCCSA and its Code.*

[4] I was also referred to the following cases of the BCCSA:

> *Modise v The Registrar*[1],
> *Milk Producers Organisation v Electronic Media Network*[2] and
> *Clean Heat Energy Saving Solutions v Electronic Media Network*[3].

In all 3 cases the Tribunal emphasised the need to resolve complaints against broadcasters speedily. This is in line with the nature of an administrative *quasi*-judicial body like ours where its procedures are much more informal in contrast with the procedures of courts of law.

[5] Another factor to be taken into account is the requirement in article 2 of our Constitution that complaints should be resolved cost effectively. I do not know how much the legal costs in this matter have amounted to so far, but in my experience, it would probably be many thousands of Rands. Should I decide that the Complainant may proceed with this complaint before a tribunal of the BCCSA the legal costs will surely be very high.

[6] The question could be asked if I should turn down this application, what remedies would there be left for the Complainant? I think that should this be the outcome of this application, the Complainant would still be able to approach the courts. I even think that this was the motivation behind the Complainant's application to the High Court to have Clause 3.9 of our Procedure declared unconstitutional. The (now deleted) Clause 3.9 required of a complainant to waive it's right to institute court proceedings against a broadcaster before proceeding with the complaint at the BCCSA. Since the deletion of Clause 3.9 from our Procedure, the Complainant can approach the court to have it rights enforced. I do not think that it is necessary for me

[1] Case 10/2014.
[2] Case 25/1999.
[3] [2014] JOL 32627 (BCCSA).

to consider the matter of prescription as far as the 2015 broadcast is concerned. That is a question for the court to decide.

[7] Taking all factors into consideration, I do not think that it will be in the interest of justice to allow the Complainant to proceed with the complaints before a tribunal of the BCCSA. My decision then is that this application should fail.

In the result the application is turned down.

HP VILJOEN
CHAIRPERSON OF THE BCCSA