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CASE NUMBER: 04/2018

DATE OF HEARING: 18 JANUARY 2018

JUDGMENT RELEASE DATE: 19 FEBRUARY 2018

FERREIRA

COMPLAINANT

vs

SABC3

RESPONDENT

**TRIBUNAL: PROF HP VILJOEN (CHAIRPERSON)
MR BRIAN MAKEKETA (DEPUTY CHAIRPERSON)
ADV BOITUMELO TLHAKUNG**

FOR THE COMPLAINANT: The complainant did not attend.

FOR THE RESPONDENT: Mr Nyiko Shibambo, Acting Manager: Broadcasting Compliance, Policy & Regulatory Affairs of the SABC accompanied by Ms Refilwe Tamana.

News report about the Black Monday protest and visuals of flags was not fair, accurate and truthful. The respondent argues that the news reporter gave context to the report, words used and why the flags were shown. We found no evidence that the respondent did not present the news report in a correct context and fair manner without intentional or negligent departure from facts whether by distortion, material omission or summarisation – complaint dismissed - Ferreira vs SABC3 and Channel 404, Case No: 04/2018 (BCCSA)

SUMMARY

The SABC 3 news report broadcast on 2 November 2017, on channel 404 and SABC3, about the Black Monday protest, visuals of the old South African flag, the AWB flag and German Swastika flag was allegedly not fair, accurate and truthful. The respondent argues that the news reporter gave context to the words used and why the flags were

shown. After viewing a video clip of the news item, we found that there was no evidence that the respondent did not present the news report in a correct context and in a fair manner without intentional or negligent departure from facts whether by distortion, material omission or summarisation. We found no contravention of the Broadcasting Code of Conduct. The Complaint is accordingly not upheld.

JUDGMENT

[1] The Registrar of the BCCSA received a complaint from Mr. Ferreira about the news report which he says creates fear, fuels racial division. He says that the using of old images and attaching them to a current story, and using fake things, like saying a flag was burnt, and by being unbalanced by not including all of the various sides involved in the story, is irresponsible and lazy reporting.

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

"I'm a journalist and a TV critic and I want to please submit a complaint about a disturbing news story that was broadcast by SABC News on SABC News (DStv 404) and SABC3 on 2 November 2017 in which the broadcaster's news division failed to do balanced, fair and proper reporting and broadcast a story that shocked me.

I'm not affiliated with, a member of, have sympathy with, support, or belong to any of the groups, political parties, and I don't know any of the people who appear, spoke or were included in the report, but when I saw it I felt that the SABC erred in a very big way in doing a proper story, and actually helped in spreading wrong information and making an issue of national importance even worse.

The SABC News report starts at the 53rd second:

https://www.youtube.com/watch?v=4P2M7Hfk_70

Here is what is wrong:

- 2.1. The news anchor in the intro uses words "sedition" and "genocide" allegedly attributed to a minister. This is very, very strong language and words – words that's not used by the minister in her quotes. This is very irresponsible.
- 2.2. In the story, none of the organisers of the actual protest were asked for a response. Or none was included. If they were asked or if the SABC tried to get a response, it wasn't mentioned that the SABC couldn't reach them.
- 2.3. The SABC interviews a minister who talks about "the burning of the flag" as if it is something that happened now during the protest. No flag – either old or new - was burned at all. On social media a photo circulated of the South African flag that was burnt in Delmas in 2012. Why didn't the SABC check this before running the minister's comments? The minister's strong language and reaction is based on so-called "fake news" that is now being commented on by the minister as if it is real?
- 2.4. From 3:24 the SABC shows shocking images of the AWB flag flying, as well as images from/on social media of the old South African flag.

The old AWB flag is surely file footage. Why isn't it indicated as such? The old South African flag images shown are from 2010 and were taken by photographer James Oatway. Some of the images are from scenes overseas, also from years ago. None of it

its indicated as being old, or that it wasn't part of the protest. These old images attached to the story creates a dangerous perception that it happened as part of the so-called Black Monday protest.

- 2.5. The story itself creates fear and exactly what the one minister actual warns about – fueling racial division – by using old images and attaching it to a current story, and using fake things, like saying a flag was burnt, and by being unbalanced by not including all of the various sides involved in the story. It is irresponsible and lazy reporting.”

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

“BCCSA COMPLAINT: THINUS FERREIRA - CHANNEL 404/SABC 3 - NEWS - 02.11.2017 - 18:00

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

1. It is highly unprecedented that the complainant; who refers to himself as a journalist, fails to comprehend the facts as told in a simple story like that. Whether the words used in the story are strong or not, that is his subjective view.
2. The march was fairly covered across SABC platforms on the day in question. The focus of the story referred to by the complainant was about the actions of those who marched earlier. To a journalist, as the complainant has described himself, it should not be foreign to know that every story is angled in order to look at other aspects that may not have been the initial focus of the story. In this case, the minister was responding to what had happened. At this point in time, the whole country was aware of what had happened.
3. Nowhere in the clip did the reporter or the minister say that the burning of the flag happened on that day. It is the complainant's own interpretation that it was the minister's insinuation.
4. If the complainant had viewed the story and listened carefully to the reporter and the newsmakers, could have heard the reporter giving context to why the flags of the AWB and others were shown. The reporter in the story gave context to why those flags were being shown.

We submit that the BCCSA should dismiss this complainant as it is vexatious and frivolous.”

EVALUATION

- [4] The gist of the complaint is that the SABC 3 news report broadcast on 2 November 2017, on channel 404 and SABC3, about the Black Monday protest, visuals of the old South African flag, the AWB flag and German Swastika flag was not fair, accurate and truthful.
- [5] The respondent argues that the news reporter gave context to the words used and explained why the flags were shown. The respondent also argues that the news report did not contravene any clause of the Code of Conduct of the BCCSA.

[6] The item complained of is clearly a news report. Clause 11 of the Code of Conduct of the BCCSA, relevant to this complaint, determines:

11.1. Broadcasting service licensees must report news truthfully, accurately and fairly.

11.2. News must be presented in the correct context and in a fair manner, without intentional or negligent departure from facts, whether by:

- a. Distortion, exaggeration or misrepresentation.
- b. Material omissions.
- c. Summarisation.

[7] In *Montgomery v SABC 2 News*¹ the BCCSA held that *the mere showing of these “right wing Afrikaner symbols” in itself does not constitute the advocacy of hatred. Much more would be required for these words and the showing of the old flag to constitute the advocacy of hatred and the incitement to cause harm. The broadcaster was merely informing the public of the various political sentiments that prevailed after the court judgment.*

[8] In *Khomanani Business College v SABC1 and 3 News*² the BCCSA held that *the context in which the news broke was at the time when the majority of the matriculants would have started sitting to write their final exams. Thus the argument by the College as to why the news team did not focus on other business courses offered by the College is not relevant.*

[9] An example of a news broadcast which constituted a contravention of the Code on similar grounds, is to be found in *Oelschig v SABC*³ where a news item dealt with allegations of Third Force activities before the Truth and Reconciliation Commission. During the news report the camera focussed on a document randomly chosen by the cameraman but which clearly displayed the name of the complainant. The document was unrelated to the news item but caused the complainant considerable embarrassment as the visuals suggested his engagement in Third Force activities.

¹ Case no.10/2007

² Case no.06/2012

³ Case 10/1997

- [10] Had this news clip been an in-depth discussion programme, the balance and fairness principle of the Code would have required of the Respondent to give due weight to all the parties' opinions. The opinions of the flag bearers would have to be included in such a programme. The complaint, however, concerns a news item of short duration.
- [11] One needs to remember that the critical question in utilizing illustrative footage is whether within the context of the news event, these images are truly representative and are a factual depiction of the broadcast news occurrence. Further that the broadcaster has not extraneously embellished the footage or falsified same to such an extent that the news broadcast can be said, within context of the news event, that such news broadcast is substantially or materially inaccurate and that the news broadcast is an intentional gross distortion or misrepresentation of events that had occurred.
- [12] The further consideration that we had to weigh, is whether the news broadcast viewed within context of the news occurrence, with the background visual materials forming an integral part of the news broadcast, contains substantial or material errors of such impact that these errors render the news broadcast objectively viewed, to be so flawed that the news broadcast viewed within context of the news occurrence is not a reasonably true representation of the true facts as experienced at the news event.
- [13] What is also important to remember is that the decision on content of news bulletins rests with the broadcaster. The BCCSA has no jurisdiction over the content of broadcasts in the sense of quality, discrepancies between broadcasts of the same material, what detail should be included and what left out, and so on. This tribunal can only judge whether any of the particular broadcasts constituted a contravention of the Broadcasting Code of Conduct.
- [14] The news item was presented in a correct context and in a fair manner without intentional or negligent departure from facts whether by distortion, material omission or summarisation.

After having considered all the facts we find no contravention of the Broadcasting Code of Conduct. The Complaint is accordingly not upheld.



BRIAN MAKEKETA
DEPUTY CHAIRPERSON

The Chairperson Viljoen and Commissioner Tlhakung concurred with the above judgment.