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ADJUDICATION NO: 50/A/2019

NAME OF PROGRAMMES: MORNING LIVE SHOW INTERVIEW BY CHRISELDA LEWIS

DATE AND TIME OF BROADCAST: 27 OCTOBER AT 17:00

BROADCASTER: SABC CHANNEL 404

COMPLAINANT: VILAKAZI, LOBESE AND OTHERS

COMPLAINT

Complaint that a broadcast of an interview with the mother of a convicted child rapist amounts to the glamorisation of violence and the advocacy of hatred based on race and gender.

APPLICABLE CLAUSES

The Following clauses of the BCCSA's Code of Conduct for Subscription Broadcasting service licensees:

Advocating war, violence or hatred

10 A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context –

10.2 incites imminent violence; or

10.3 advocates hatred that is based on race, ethnicity, gender or religion and which constitutes incitement to cause harm.

Exemptions

11 Clauses 9 and 10 do not apply to –

11.3 broadcasts which amount to a bona fide discussion, argument or opinion on a matter of public interest.

28.1 News

28.1.1 Licensees must report news truthfully, accurately and fairly.

ADJUDICATION

[1] The Registrar of the BCCSA received about 550 (Five hundred and fifty) complaints against the SABC’s channel 404 (*hereinafter referred to as “the Broadcaster”*) for its broadcast of the 27th of October 2019 at 17:00. For ease of reference, only two of the complainants are identified herein; namely Mr Vilakazi and Mr Lobese (*hereinafter referred to as “the Complainants”*). The rest of the complainants are cited as “Others”. Any reference in this adjudication to the “Complainants” should thus be accepted to also be reference to Others. I must point out that most of the complaints that were received were in the form of a petition. Although the immensity of the complaints is noted, the BCCSA does not consider petitioned complaints, but instead deals with complaints directly from affected persons or duly represented persons, whether natural or juristic.

The broadcast in question was an interview with the mother of a recently convicted child rapist (notoriously known as the “Dros rapist”); Nicholas Ninow (*hereinafter referred to as “Nicholas”*). The Complainants believe that the broadcast sought to solicit sympathy for Nicholas and his family, and it was disturbing and insulting to the rape victim and her family. The Complainants contend further that the broadcast amounted to “White privilege” in that crimes committed by White people are “humanized”.

[2] **The complaints read as follows:**

Vilakai: "I would like to file my complain with you as a body. The matter relates to an EXCLUSIVE PROGRAMME aired by the SABC on Sunday 27 October 2019.

Background of the Matter

The public broadcaster aired a special programme yesterday the 27 of October 2019 at 17h00 and continues reporting on all SABC bulletin during the whole Sunday night and again on the Morning live show on the 28 of October 2019. The matter relates to a rapist who was found guilty by the court in JHB and was sentence to life in prison for raping a 7 year old girl. The rape happened in the offenders family business.

The court in JHB found the offender guilty was sentence accordingly. The SABC news team decided to offer the family of the offender an exclusive slot to give their side on events. This was done not taking into account a number of issuing including the trauma that the girl might go through. As the programme was aired pictures of the offender from an early age were played in the background. the insensitivity of this matter was ignored by the SABC.

Imagine a situation where the family of the girl raped is watching this programme with the little girl? What would happen to the littler girl and the whole family witnessing the coverage of this case. The girl have already went through serious trauma from the day of the incident, during the trial and when the matter was finalised in court. Other than the family the whole public is insulted by this exclusive interview. Think about the hundreds of young girls who get raped out there.

The SABC have never in the past gave offenders parents a right to reply or give their version of the story. The question that must be asked is why now, why her, to achieve what at the end? Of Sunday after I have seen this programme I wrote to the journalist who covered the interview asking her What motivated her and her editor to do this interview worse give the family an exclusive slot. The name of the journalist is Chriselda Lewis. For the purpose of this complain you can visit my twitter handle and her to get more information.

The journalist said she did the interview to give the mother a chance to her in order to say her side of the story as the offender blamed her mother for introducing him to drags. According to the journalist it was in public interest to get the version of Nicholos mother. I disagree with this simply because this matter was finalised and the court made pronouncement. It is undermining the judiciary to think that there is any positive information that the mother can have. It was in the courtroom where the mother was supposed to submit or say her side of the story NOT at the SABC.

Matters that have been settled in court and a judgement have been delivered are not in public interested especially if it is a sensitive matter involving a minor. The SABC failed to look at this matter in a border level, taking into account the lives of the victims. The SABC must apologies to the family of the little girl and the public at large. Everything is insulting about that interview, amongst others it washes away the pain of the victim and protect, promote white privilege."

Lobese: "This is my first time laying such a complaint so please excuse the format not being of the standard.

The SABC airing of the interview Chriselda Lewis had with convicted rapist Nicholas Ninow. I mean a child was raped. The discussion then becomes about the bad parent Nicholas Ninow's mother is for doing drugs with her son? (This is the justification Chriselda used on her twitter as to

why she interviewed the mother). The clip on twitter and the subsequent tweets Chriselda shared to the justification of the clip were ridiculous.

This interview is insensitive to say the least. The manner in which white violence is humanized and viewers are prompted to have empathy for different acts of violence shouldn't be allowed. Humanizing rapists of any race shouldn't be allowed - yet white offenders seem to always have a story that one ought to listen to to understand their actions.

One will not even get into the "bad-parenting" of his mother.

I am of the view this interview goes against following codes of conduct:

4. (1) Broadcasting service licensees must not broadcast material which, judged within context, sanctions, promotes or **glamorises violence** or unlawful conduct based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

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.

News:

- (1) Broadcasting service licensees must report news truthfully, accurately and **fairly**.

This last point may be contested in that to whom is this interview unfair?

However in such a crucial climate the way media uses their voice & platform, the stories they share, the voices they amplify have a real implications to how we move forward in understanding & justifying the actions of rapists. "It wasn't him. It was because his mom made him a drug addict & was a bad parent thus he took out his frustrations through raping a child"/"It wasn't him it was because he was a lonely man & just needed a release"/"It wasn't him it was because she was wearing a short skirt".

This interview promotes rape-culture and is unacceptable.

These are all messages socially we are taught through movies/radio/news/conversations at home.

I would hope the grievance and implications of such messages is understood and dealt with accordingly. The last thing the victims family needs to see/watch on a Sunday evening is their child's rapist's mother crying on evening news about how her child isn't a rapist. The last thing that a baby girl needs to see in years when researching her case or stumbling upon this case is seeing such. It's traumatic.

Further

15. Privacy, Dignity and Reputation

- (1) 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.
- (2) In the protection of privacy, dignity and reputation special weight must be afforded to South African cultural customs concerning the **privacy and dignity of people who are bereaved** and their respect for those who have passed away.

- (3) In the protection of privacy, dignity and reputation special weight must be afforded to the **privacy, dignity and reputation of children**, the aged and the physically and mentally disabled. This whole section was violated as well.”

[2] The Broadcaster responded as follows:

BCCSA COMPLAINT: SKHUMBUZO VILAKAZI - CHANNEL 404 - NEWS - 27.10.2019 -17:00

In respect of the above-mentioned complaint, we submit an electronic copy of the segment. The SABC has noted the concerns raised by the complainants:

1. The SABC had covered extensively, the story of convicted rapist, Nicholas Ninow. The SABC comprehensively reported on the rape conviction across its platforms.
2. A story can have a variety of angles that may be explored at any given time, so is that of Ninow's.
3. The SABC had learnt during the sentencing of Ninow, that he had been introduced to chemical drugs by his mother. The opening clip of the interview aptly reflects this. This is the angle which the SABC was interrogating through the interview with his mother.
4. The aim of the interview was to try and get to the mind of a mother who would wittingly introduce drugs to her minor child. The intention was never to negate the fact that a young girl was raped and that Ninow was convicted of this crime. This is contrary to the complainant's belief that the SABC had assumed Ninow's innocence.
5. The intention of the story was to educate society about mothers, or families who create the environment which ultimately breeds rapists. The story of Ninow's mother was one which was meant to remind society that the actions of an individual directly correlate and impact on the next person, and ultimately the little girl who was raped. And if those actions are negative, the impact will also be negative. As a drug addict, Ninow's mother introduced him to drugs, as a 15-year-old.
6. The story was meant to develop to a point where a discussion could be held on the effects of drugs to society. The SABC reiterates that the intention of the story was never to suggest that the use of drugs could then excuse Ninow from the crime he committed.
7. It is not true that the SABC has never given offenders' families the right to reply or to offer their version. The SABC has in the past interviewed the family of the man who was convicted of the rape and murder of Anene Booysen. Secondly, the SABC did the same with the family of the man who raped Courtney Pieterse. Also, the family of the man who pulled the trigger in the murder case of Annie Dewani was also interviewed. These are just a few examples. There are many more.

The SABC seriously noted the concerns raised by the complainant and the public sentiments shared elsewhere with regard to the broadcast of the said interview. We however submit that no prima facie evidence has been presented to suggest any contravention of the Code.

EVALUATION

- [3] I watched the clip in question. The interview was conducted with Nicholas' mother. The entire interview took place with the mother in tears and portraying quite a lot of sad emotions. The mother admitted to introducing Nicholas to drugs when he was still a teenager; she admitted that she too is a recovering drug addict. She indicated that Nicholas is not a rapist, instead in this rape case, he made a mistake. She then gave some advice to young mothers, because she gave birth to Nicholas when she was 16 years old. Her advice was that young mothers must ensure that as their children grow older, the gap does not close, and that their children must remain children. As she was saying this, pictures of her and Nicholas, when Nicholas was still a toddler were displayed. The mother apologised to the rape victim and her family and she also declared her love for Nicholas.
- [4] The Complainants are aggrieved by this interview on grounds that the supposed remorse displayed by Nicholas' mother, and the mere fact that she was even interviewed is insulting to the Complainants, the public in general and to the rape victim and her family. Further that the broadcast sought to "humanize" crimes committed by White people. In this adjudication, I will only deal with the Complainants as the only parties complaining. This is because the Complainants may not speak on behalf of the South African public in general, nor speak on behalf of the rape victim's family particularly on the impairment of dignity. This is because dignity carries both a subjective and objective element, and both must be present for a finding on the impairment of dignity to be upheld. The Complainants as such lack the subjective element which can only be attested to by the person whose dignity was compromised; therefore clause 15 of the Code, upon which the Complainants have argued regarding privacy and dignity, does not apply herein. The Complainants made further submissions based on clauses 9, 14 and 17 of the Code. The broadcast did not amount to child pornography, bestiality, incest, rape, sexual conduct and violence. Moreover, special programme classification was not required as the broadcast was during a news broadcast and appropriate advisories were observed by the Broadcaster.

[5] The interview with Nicholas' mother took place after Nicholas was convicted and sentenced to life by the North Gauteng High Court, Pretoria. The rape case was, from inception publicised; with recurrent media updates of the Court proceedings, it was thus a public case. It is not in doubt that this case was a sensitive one, in that it involved the rape of a child, in a public place and at time where gender-based violence and child abuse are being exposed. It has unfolded, as the case progressed, that the case also raised racial tensions, where a White man, who raped a child is supposedly getting sympathy from the public and especially from the media. At this point, I must indicate that it is also the media that publicised the rape case, from when the rape was discovered, throughout the court proceedings, and up until Nicholas was convicted and sentenced. The role of the media during court proceedings was expressed in the case of *City of Cape Town v South African National Roads Authority Limited and Others*¹ where the Court stated the following:

“The right to freedom of expression lies at the heart of democracy and is one of a ‘web of mutually supporting rights’ that hold up the fabric of the constitutional order. Section 32(1) of the Constitution guarantees everyone the ‘right of access to information held by the state’. Citizens and public interest groupings rely on this right to uncover wrongdoing on the part of public officials or for accessing information to report on matters of public importance. The Constitutional Court has noted that the media has a duty to report accurately, because the ‘consequences of inaccurate reporting may be devastating. It goes without saying that to report accurately the media must be able to access information. Access to information is ‘crucial to accurate reporting and thus to imparting information to the public.’ Whilst s 32 of the Constitution guarantees the right of persons to access relevant information, s 16 entitles them to distribute that information to others. Section 16(1)(b) of the Constitution provides: ‘Everyone has the right to freedom of expression, which includes freedom to receive or impart information or ideas’. Importantly, therefore, the right to freedom of expression is not limited to the right to speak, but also to receive or impart information and ideas. The media hold a key position

¹ 2015 (2) All SA 517 (SCA) at par 20.

in society. Courts have long recognised that an untrammelled press is a vital source of public information..... Grosjean recognised that ‘since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern’. In this country the media are not only protected by the right to freedom of expression, but are also the ‘key facilitator and guarantor’ of the right. The media’s right to freedom of expression is thus not just (or even primarily) for the benefit of the media: it is for the benefit of the public.’”

Applying the above reasoning of the court in this case; it suffices that the interview with Nicholas’ mother formed part of the right to freedom of expression. In this sense, and as the Court above emphasized; freedom of expression is not only limited to the Broadcaster’s right to “speak” but it extends to and encompasses the public’s right to be informed and to access accurate information. I cannot think of a more appropriate way a broadcaster can broadcast accurate information than getting this information from the source, whether it be the Court, the perpetrator or the even the victim. The importance of an uncensored media cannot be overemphasized.

[6] In this case, it was crucial to get to understand the perpetrator, not for the purpose of sympathising with him, but for the purpose of unveiling the pandemic, that has led to crimes of abuse and killings of society’s most vulnerable groups. The North Gauteng High Court handed down a sentence which not only aims to punish Nicholas, but also to deter similar crimes. The role of the media could not possibly end after Nicholas was sentenced, especially with a case that has shocked the entire nation. It was imperative, to understand the mind of the perpetrator, in order to establish the cause of such hideous crimes, which continue to happen and which the Courts alone, through punitive justice cannot completely eradicate. This is why the media has an important role to play. The broadcast was thus not an attempt to nullify the severity of the crime committed by Nicholas, but the purpose was to navigate other solutions, in addition to the criminal justice system, that will to put an end to violence against women and children. This is

more so because for a long time, emphasis has been placed on defence mechanisms, namely; what the victim or potential victim should do to protect themselves, and little attention has been placed on what the perpetrator can do to refrain from committing such crimes. As such, Nicholas' mother revealed the role that drugs, and the lack of parental care play where such crimes are concerned. She was very subjective in her submissions, which does not come as a surprise, seeing that Nicholas is her child. It is however inconceivable that the Broadcaster lobbied public sympathy for the perpetrator.

[7] The fact that Nicholas happens to be a White rapist and his mother chose to be interviewed on air, does not make Nicholas any less of a criminal than criminals of any other race. Often, convicted criminals continue to carry an air of superiority and arrogance, even after they come face to face with their victims and even during court proceedings; regardless of whether their crimes are in the public domain or not. Similarly, some criminals do show remorse once faced with the strict hand of the law. It is improbable that the Broadcaster interviewed Nicholas' mother because Nicholas is a White man, it is however more probable that she was interviewed because she was, firstly, willing to be interviewed and also because the rape case has been under public scrutiny from when it was first reported / revealed to the public, until when Nicholas was convicted. It must also be noted that this interview, coupled with the tears shed by Nicholas' mother, are not capable of influencing the Court or even the criminal justice system in any way. The interview might have captured the hearts of some viewers, and petitioned the anger of others, but it remains a fact that Nicholas was convicted and sentenced accordingly. The public has the right to access to information and freedom of expression. I thus find that the broadcast did not amount to the advocacy of hatred that is based on race, ethnicity or gender. The Broadcaster has as such not contravened clauses 10 (2) & (3) of the Code. The broadcast also amounted to a *bona fide* discussion on a matter of public importance, which is the protection of children and women, and a means to come up with new and practical solutions to woman and child abuse. The broadcast was thus within the prescripts of clause 11(3) of the Code.

[8] The Complainants are also concerned about the broadcast in that the case involved a child. The identity of the child has been kept confidential, as required by law, throughout the broadcast and in all other previous broadcasts on the rape case. It therefore does not mean that any public discussion about the case, amounts to the compromise of the child's identity or to her further victimization.

[9] As far as reporting news fairly is concerned, the Complainants allege that the Broadcaster did not report news fairly because the interview was not fair to the Complainants (*was insulting*) and was also not fair to the rape victim and her family. As indicated above, fairness of the interview to the victim and the victim's family can only be attested to by the family and not the Complainants. With regards to fairness where the Complainants are concerned, the test that is used herein is that of a reasonable person. The reasonable person is a legal construct, which ascertains what the ordinary viewer, with ordinary sensibilities would construe fair reporting of news to be. As already indicated, the broadcast did not amount to the advocacy of hatred or violence based on race. The Complainants might have been gravely insulted by the interview, because according to the Complainants, it humanized crimes committed by White people, but this averment on its own, draws away from the core issue, being that crimes continue to be committed by all races against children and women, and new solutions to this problem are required. The broadcast, objectively viewed, was not unfair to victims of sexual crimes or even to the viewers, it navigated additional solutions to a persistent problem. I thus find that the Broadcaster has not contravened clause 28(1) of the Code.

After considering all the facts, I find that the Broadcaster has not contravened the Code. The complaint is accordingly not upheld.



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