

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 13 December 2007

Case number 15/ 2007

**Monitoring and Complaints Unit of
the Independent Communications
Authority of South Africa**

Complainant

Vs.

Soweto Community Television

Respondent

Complaints and Compliance Committee Panel

R. Mokgoatlheng	(Acting Chairperson)
R. Mokwena-Msiza	(CCC Member)
S. Thakur	(CCC Member)
N. Ntanjana	(CCC Member)
D. Moalosi	(CCC Member)
J.C.W. Van Rooyen	(Councillor)

For the Complaints Monitoring Unit

Monitoring Complaints Unit Senior Manager for Licensing:	Mr. Bruce Mkhize
Assisted by: Monitoring Complaints Unit Manager:	Ms. Fikile Hlongwane
and Compliance officer responsible for Soweto Community TV:	Ms. Lindisa Mabulu

For the Respondent

Mr. JA van Rensburg

¹ In terms of s 17C of the ICASA Act 13 of 2000 as amended and abbreviated as "CCC"

JUDGMENT

JCW VAN ROOYEN SC

[1] A complaint that the respondent television station contravened two clauses of the Broadcasting Code was lodged with the Authority. The Monitoring Committee of the Authority inquired into the matter and decided to take the matter up itself before the Complaints and Compliance Committee.

[2] The clauses involved are the following:

34.6 The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.

38 Insofar as both news and comment are concerned, broadcasting licensees shall 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.

[3] The daughter (who will be referred to as “D” for purposes of this judgment) of the initial complainant was almost 16 years old when she took part in a live panel discussion as part of a regular teenage programme called *Dlala Ngeringas* (“Playing with Words”). That evening the programme focused on teenagers who are stressed and depressed. During the discussion D disclosed that when she was six years old her paternal uncle had raped her. She gave details as to how she felt about it and the assistance, which she received.

[4] The defense from the respondent was that its presenters were utterly surprised when D revealed that she had been raped. They had obtained the father’s permission that she could take part in the discussion. The lady who obtained the permission was not available to testify and would, generally, not seem to have been willing to testify. Consent of the father has, accordingly, not been placed before the Committee convincingly. The father vehemently denied that he had granted permission.

[5] As a general rule, permission must be obtained from a parent or a legal guardian before a child under 18 may take part in any programme. This rule is, however, not included in the Broadcasting Code. The CCC is not permitted, within this Rule of Law State, to create offences itself. The applicant was, accordingly, correct in not filing a complaint on this basis.

Clause 12 of the Code may not be interpreted so as to grant the CCC such a wider power. The clause provides as follows:

“This Code does not attempt to cover the full range of programme matters with which the Authority and licensees are concerned. This is not because such matters are insignificant, but because they have not given rise to the need for Authority guidance. The Code is therefore not a complete guide to good practice in every situation. Nor is it necessarily the last word on the matters to which it refers. Views and attitudes change, and any prescription for what is required of those who make and provide programmes may be incomplete and may sooner or later become outdated. The Code is subject to interpretation in the light of changing circumstances, and in some matters it may be necessary, from time to time, to introduce fresh requirements.” (emphasis added)

Of course attitudes and tolerance changes over time and the CCC will constantly bear this in mind. But in spite of what the Code provides as to “fresh requirements” such requirements will have to be introduced by the Council of the Authority. The time honoured maxim *judicis est ius dicere sed non dare* has no exceptions to it in this case².

[6] One way to look at the matter before the CCC is to argue that a broadcaster has to take full responsibility for everything that it broadcasts. It would then be no excuse to argue that the disclosure by D was unforeseen or unforeseeable. In this sense, absolute responsibility will apply and reference to absence of negligence would be irrelevant. However, once it is borne in mind that a broadcaster may even be suspended or heavily fined by the Council of the Authority when the CCC has found against it on the merits, at least negligence will have to be present before a contravention may be found. The broadcaster would be responsible for the negligent or intentional acts or omissions of its employees or presenters, whether part-time or full-time, when acting within the scope of their employment. As a result of the nature of the inquiry before the CCC, onus does not

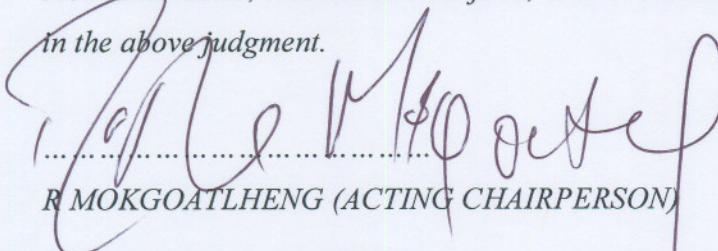
² See *S v Rudman & Another; S v Mthwana* 1992(1) SA 343(A).

come into play. If the CCC is satisfied on all the facts that the broadcaster was intentional or negligent, it finds against the broadcaster. The test would be what the reasonable broadcaster would have done in the circumstances and whether such a broadcaster would have prevented the disclosure or omission from having taken place. In an ideal world with Plato-crafted people one could expect perfectionism, but even Plato concedes that no legislature may prescribe rules, which hold its subjects responsible for what happens by chance³. But not all faults are attributable to negligence or intention. To return to the facts before the Committee: D is clearly a young teenager of high intelligence. She speaks with full confidence and is superbly eloquent, also in English, which is not her mother tongue. The programme dealt with depression and stress amongst teenagers. D, without any hesitation, disclosed that she had been raped. One could argue that the presenters should have stopped her immediately from saying anything more. But, once again, that might have placed a wrong perspective on what was already disclosed. By referring to negligence I intentionally leave open the question whether the victim rule does not, in any case, require that only an intentional disclosure amounts to a contravention. Judged by the language of the clause, it would seem to be the case.

[7 We have come to the conclusion that the respondent has not contravened the clause, which prohibits the disclosure of the identity of a rape victim. D disclosed this herself and she would not seem to be the kind of person whom the broadcaster should have cautioned beforehand. The same argument applies to the privacy complaint.

The complaints are dismissed.

The Acting Chairperson Ratha Mokgoatlheng and Committee Members Refiloe Mokwena-Msiza, Nomveliso Ntanjana, Daniel Moalosi and Surendra Thakur concurred in the above judgment.


R MOKGOATLHENG (ACTING CHAIRPERSON)

Date: 

³ See *S v Bernardus* 1965(3) SA 287(A) at 292 per Steyn CJ