

# COMPLAINTS AND COMPLIANCE COMMITTEE<sup>1</sup>

Date of Hearing: 28 September 2018

Case Number: 287/2018

**S.O.S SUPPORT PUBLIC BROADCASTING COALITION &  
MEDIA MONITORING AFRICA**

**COMPLAINANTS**

**v**

**SOUTH AFRICAN BROADCASTING CORPORATION**

**RESPONDENT**

**PANEL:** JCW van Rooyen SC

Dr Keabetswe Modimoeng (ICASA Councillor)

Mr Peter Hlapolosa

Mr Mzimkulu Malunga

Mr Jacob Medupe

Prof Kasturi Moodaliyar

Mr Jack Tlokana

For the Complainants: Ms Justine Limpitlaw (Attorney) and with her Ms Duduetsang Makuse.

For the Respondent: Mr Nyiko Shibambo and Mr Philly Moilwa from the SABC.

CCC: Coordinator: Ms Lindisa Mabulu

Acting Coordinator: Ms Meera Lalla (Attorney)

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## JUDGMENT

### JCW VAN ROOYEN

[1] A complaint was lodged by SOS Support Public Broadcasting and Media Monitoring Africa against the South African Broadcasting Corporation, the

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<sup>1</sup> An Independent Administrative Tribunal at the Independent Communications Authority of South Africa (ICASA) in terms of Act 13 of 2000 and section 192 of the Constitution of the RSA. It, inter alia, decides disputes referred to it or filed with it in terms of the Electronic Communications Act 2005. Such a decision is, on application, subject to review by a Court of Law. The Tribunal also decides on complaints from outside ICASA or references from within ICASA which it receives against licensees in terms of the Electronic Communications Act 2005, the Broadcasting Act 1999 or the Postal Services Act 1998 (where registered postal services are included). Where a complaint is upheld, the matter is referred to the Council of ICASA with a recommendation as to an order, if any, against the licensee. Council then considers an order in the light of the recommendation by the CCC. Once Council has decided, the final judgment is issued by the Complaints and Compliance Committee's Coordinator.

public broadcaster in terms of the Broadcasting Act 1999. The complaint is that the SABC did not, in accordance with ICASA Regulations, disclose that a Minister's participation in a broadcast was undertaken to be paid for. Such an undertaking, plus the omission to mention it twice in the broadcast, is in conflict with Regulation 5.9 of the *Regulations Relating to the Definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of Broadcasting Activities* 1999 as amended in 2002.

[2] In her opening statement Ms Limpitlaw criticised the Broadcasting Compliance Division at ICASA for not having filed a complaint itself. She argued that the Authority is duty bound to have monitored the SABC and have referred the alleged contravention of the Regulations to the Complaints and Compliance Committee in terms of section 17B(a)(ii) of the ICASA Act.

[3] It is true that the Authority has a duty to monitor the broadcasting sector to ensure compliance with the ICASA Act and the underlying statutes and relevant Regulations. Section 4(3) of the ICASA Act indeed provides as follows:

**4. Functions of Authority**

(1) The Authority -

(a) must exercise the powers and perform the duties conferred and imposed upon it by this Act, the underlying statutes and by any other law;

...

(3) Without derogating from the generality of subsection (1), the Authority -

(a) ...

**(b) must monitor the electronic communications sector to ensure compliance with this Act and the underlying statutes; (*accent added*)**

[4] A few observations in this regard need be made:

(a) ICASA is not empowered to exercise pre-control as to any broadcasting material – see section 53 of the ECA. Censorship is, thus, not permitted. In fact the Broadcasting Complaints Commission, which was recognised in 1995 by the Independent Broadcasting Authority (now retroactively the Independent Communications Authority of South Africa) as an independent tribunal to consider complaints against broadcasters which are members of the National Association of Broadcasters, is also only permitted to react upon complaints

and may not itself initiate a complaint.<sup>2</sup> Pre-control is, of course, also not permitted

(b) Although the Authority, by way of its compliance divisions, has a duty<sup>3</sup> to monitor, it does not mean that Authority has to *police* the airwaves or other electronic communications licensees. The following observation by Senyato AJ in *Fairgrove(Pty) Ltd and Others* 2018(2) SA 469(GJ) is most relevant in this regard, where monitoring and policing are distinguished in degree from each other:

[76] As the registrar fulfils a critical role in the property transfer process in the Republic, and given the high expectation of the public that she will not only examine the deeds presented to her for examination, but also monitor that those appearing before her to execute such deeds are indeed conveyancers authorised by the firms with authorised numbers allocated by the registrar to those firms, it is critical that the registrar and her staff ensure that the person who signed the preparation certificates and appeared to execute the deed of transfer was indeed a conveyancer. Ms Moroka further contended that the registrar could not be expected to '*police*' the register of conveyancers in her possession. I am not persuaded by that contention, given the fact that not only was the deed of transfer littered with errors that should have caused its rejection, it was also presented by Kekana, who had prepared the preparation certificate and was himself not a conveyancer, and was not authorised by MWIM as one of its conveyancers.

[77] The machinery of the Act, regulations and the registrar's circulars, as submitted by Mr Albertus, is clearly designed to enable the registrar easily to verify that those who purport to be conveyancers are in fact conveyancers, and this requires the staff of the registrar to maintain, monitor and check the register of conveyancers provided for by reg 16. *This is not policing of conveyancers*, but simply doing the right thing to protect the property owners in the Republic and the funders who secure themselves through mortgage bonds, general notarial covering bonds required to be noted in the deeds, and other forms of security related to properties that should be noted in the deeds. The sheer volume of deeds executed on a monthly basis cannot, in my view, be used as an excuse for inadequate and inept monitoring of the deeds themselves through a three-tier examination process by the junior examiner, senior examiner and their supervisor. Due diligence must, in my view, be exercised at all times.

(c) Thirdly there is no duty on the Authority, as contended on behalf of the Complainants, to refer a matter to the CCC. The ICASA Act clearly grants the Authority a discretion to decide whether to refer a matter to the CCC. It might, for example, decide not to refer a matter where steps had been taken to address an omission. It is, in any case, not the duty of the CCC or even within its rights to expect the Authority to refer matters to it. That is for the Authority to decide itself. Of course, all statutory duties must be exercised conscientiously. However, to expect the impossible – in the sense that every

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<sup>2</sup> See the BCCSA Website.

<sup>3</sup> As mandated by the Council of the Authority and under the supervision of the CEO.

word broadcast must be considered as to its possible contravention would, in any case, be in harsh conflict with the constitutional right to freedom of expression and go back to dictatorial, constitutionally offensive regimes. Of course, there are times, as during General and Provincial elections, where it is accepted that close monitoring would take place: but always, of course, not to censor beforehand but to possibly refer a contravention to the CCC for consideration *after* a broadcast. Yet, ultimately, it is for the Authority to decide whether it deems it necessary to refer a matter to the CCC.

[4] It was also argued that the CCC itself has the right to order that a matter be brought before it. The CCC does not have this authority. It would indeed be in conflict with its function as a section 33 of the Constitution of the Republic of South Africa administrative tribunal, recognised as such by the Constitutional Court.<sup>4</sup> Of course, once a matter is referred to it by the Authority or a complaint is lodged with it by a member of the public against a licensee within its jurisdiction, it has a duty to investigate the matter and, if necessary, hear the matter. An investigation is permitted within the parameters of reasonableness.<sup>5</sup> Such investigation is not, in any case, readily undertaken and it would be impermissible to add to the charges in the process.<sup>6</sup> It is, indeed, important that our Courts and thus the CCC, do not show any resemblance to the dictatorial rule of, for example, the English *Star Chamber* of the 16<sup>th</sup> to 17<sup>th</sup> Century.<sup>7</sup>

### **THE SABC'S RESPONSE TO THE COMPLAINT**

[5] In its written response the SABC conceded that there had been a contravention of the relevant Regulations. The Regulations were indeed issued by the Independent Broadcasting Authority (IBA) in April 1999 and amended in 2002. The Independent Communications Authority, set up in terms of the ICASA Act 2000, retroactively stepped into the shoes of the Independent

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<sup>4</sup> The Constitutional Court, in *Islamic Unity Convention v Minister of Telecommunications* 2008 (3) SA 383 (CC) has held that the CCC is an administrative tribunal in terms of section 33 of the Constitution of the RSA also that there is nothing in the ICASA Act which impinges upon its independence.

<sup>5</sup> See previous note.

<sup>6</sup> See *SAPO v Aramax and Others* Case 130/2016 where this principle was applied in not investigating the matter, where SAPO had not made out a prima facie case.

<sup>7</sup> See inter alia *S v Thebus* 2003 (6) SA 505 (CC) where Moseneke J (the later DCJ) refers to aspects of the unacceptable procedures of the *Star Chamber* – which, of course, is not what the attorney for the Complainant argued for. However, to initiate a matter itself, could place the CCC in a position which might be reminiscent of such a (*Star Chamber*) regime, which is foreign to our system of independent courts, which are not authorised to initiate matters before them.

Broadcasting Authority by virtue of the ICASA Act and, accordingly, all Regulations made by the IBA have, retroactively, become Regulations of ICASA.

The response reads as follows:

In respect of the abovementioned complaint, please find our comments as follows:

1. From the onset, the SABC would like to acknowledge that it contravened ICASA regulations pertaining to programme sponsorship by invoicing the Department of Communications for the two interviews conducted with the then Minister of Social Development, Ms. Bathabile Dlamini and not mentioning it on air. The SABC has made a public acknowledgement in the form of a press statement of the said contravention in January 2018 (the press statement is quoted later on in this judgment). The press statement went further to highlight practical steps the public broadcaster intended taking to remedy the situation.
2. The SABC can confirm that the draft Editorial Policy which addresses some of the weaknesses identified in this contravention will likely be published before the end of July 2018, for public comment. We wish to also clarify that the SABC informed the Department of Communications that they needed not pay for the interviews.
3. Given the elucidations above, it is our submission that whilst we accept that there was a contravention of applicable regulations around programme sponsorship, we believe that the SABC has properly addressed the matter to the contentment of its stakeholders and the general public.
4. The SABC rejects in strongest terms, the notion that this matter is in the public interest. In the letter, the complainants indicated that they first read about the interviews with the Minister in the *Herald* newspaper in December 2017 which makes it eight months since the matter came to light. They only complained in April 2018. It is therefore not correct for them to indicate that the matter is in the public interest, almost eight months since the contravention occurred. It is therefore our submission that this complaint is for the complainants' self-serving intentions and self-gratification.
5. In paragraph 7, the complainants make the following remark, "... *non-transparent sponsorship of programming appears to have become a regular occurrence that goes beyond the instance mentioned.*" We find the above statement to be unequivocally

reckless and baseless. There is no evidence for the complainants to reach such a misleading and irresponsible statement.

6. It is our humble submission to the regulator that the SABC has already suffered public humiliation by having to accede to the contravention. Resuscitating this matter will cause further harm to the SABC which is trying to rebrand itself as a reliable public broadcaster.
7. It is therefore the SABC's plea that ICASA considers dismissing this matter as we have effectively dealt with issues raised in the complaint.

[6]The Complainant's reply to the argument of the SABC that the matter is not in the public interest, was as follows:

In paragraph 4 of their response, the SABC states that *"the SABC rejects in strongest terms, the notion that this matter is in the public interest."* And further argues that *"this complaint is for the complainants' self-serving intentions and self-gratification."*

It is our view that the writer has taken on an antagonistic and rather unprofessional tone in dealing with the issue at hand. The SABC is emerging from a recent history of extensive editorial interference such as the now infamous *"70% sunshine news"* editorial command by erstwhile GCOO, Hlaudi Motsoneng. The impact of that unilateral and clearly unconstitutional command was that it affected news reporting of service delivery protests during a critical period, that of the 2016 local elections. The SOS Coalition and Media Monitoring Africa therefore maintain that in light of the upcoming 2019 National Elections, the matter is clearly in the public interest and goes far broader than just the SABC.

SABC Press Statement: While we appreciate that the *"the SABC has already suffered public humiliation by having to accede to the contravention"*, the SABC press statement simply demonstrates good faith to the public but it is not a remedy for the contravention. The statement states, that among other things, the SABC will *"Strengthen and clarify any grey areas in sponsorship of programming"* however it does not outline how exactly the SABC will do this to prevent future contraventions.

The draft July 2018 Editorial Policies:

- a. The SABC is currently being guided by an editorial policy which came into effect in 2004. These are the policies that were in effect when the contravention

occurred. These same policies have now been published by the SABC as “the July 2018 draft Editorial Policies” and have been offered back to the public for comment.

- b. The SABC, in paragraph 2 of their response letter claim that they can confirm that the draft Editorial Policy “*addresses some of the weaknesses identified in this contravention*”.
- c. It is our view that citing planned changes to the editorial policies, does not address the problem until such changes have formally been adopted.
- d. Furthermore, a brief content analysis of the draft Editorial Policy published by the SABC in July 2018 shows that these draft 2018 Editorial Policies are mostly a verbatim copy and paste job of the 2004 editorial policy. We can provide a copy of this should it be required.
- e. Therefore, it stands to reason that the published July 2018 draft Editorial Policies are as inadequate as the 2004 Editorial Policies in addressing any current and future contraventions of the sponsorship regulations.

Sponsorship Regulation Contravention at the SABC:

- a. The SOS Coalition and Media Monitoring Africa are not based within the SABC and as such, concede that we do not have additional objective evidence beyond the contravention of sponsorship regulations in the current matter.
- b. The statement made by SOS and MMA in paragraph 7 of our complaint is based on anecdotal reports received from internal SABC sources.
- c. It is on the basis of these reports that we humbly requested that the regulator be the entity to investigate the SABC and verify for itself, that there is, indeed no ongoing sponsorship contraventions in SABC programming.

It is our humble request to the regulator, that the CCC proceed and conduct an independent investigation, on behalf of the public, into the programming practices at the SABC and ensure that there is compliance with the regulations on the sponsorship of programming.

[7] The Complainants also filed the following statement:

RE: SOS SUPPORT PUBLIC BROADCASTING COALITION AND MEDIA MONITORING AFRICA - SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD

This is a joint letter written to you by Media Monitoring Africa and the MMA and the SOS Coalition. The SOS Coalition represents a broad spectrum of civil society stakeholders committed to the broadcasting of quality, diverse, citizen-orientated public-interest programming aligned to the goals of the South African Constitution.

The letter by the SABC, dated 10 July 2018, written in response to SOS and MMA's complaint regarding the contravention of sponsorship programming regulations gives us a lot of pause for not stopping the matter.

Public Interest:

In paragraph 4 of their response, the SABC state that *"the SABC rejects in strongest terms, the notion that this matter is in the public interest."* And further argues that *"this complaint is for the complainants' self-serving intentions and self-gratification."* It is our view that the writer has taken on an antagonistic and rather unprofessional tone in dealing with the issue at hand. The SABC is emerging from a recent history of extensive editorial interference such as the now infamous *"70% sunshine news"* editorial command by erstwhile GCOO, Hlaudi Motsoneng. The impact of that unilateral and clearly unconstitutional command was that it affected news reporting of service delivery protests during a critical period, that of the 2016 local elections.

The SOS Coalition and Media Monitoring Africa therefore maintain that in light of the upcoming 2019 National Elections, the matter is clearly in the public interest and goes far broader than just the SABC. SABC Press Statement:

While we appreciate that the *"the SABC has already suffered public humiliation by having to accede to the contravention"*, the SABC press statement simply demonstrates good faith to the public but it is not a remedy for the contravention.

The statement states, that among other things, the SABC will *"Strengthen and clarify any grey areas in sponsorship of programming"* however it does not outline how exactly the SABC will do this to prevent future contraventions.

The draft July 2018 Editorial Policies:

The SABC is currently being guided by an editorial policy which came into effect in 2004. These are the policies that were in effect when the contravention occurred.



These same policies have now been published by the SABC as “the July 2018 draft Editorial Policies” and have been offered back to the public for comment.

The SABC, in paragraph 2 of their response letter claim that they can confirm that the draft Editorial Policy “addresses some of the weaknesses identified in this contravention”.

It is our view that citing planned changes to the editorial policies, does not address the problem until such changes have formally been adopted.

Furthermore, a brief content analysis of the draft Editorial Policy published by the SABC in July 2018 shows that these draft 2018 Editorial Policies are mostly a verbatim copy and paste job of the 2004 editorial policy. We can provide a copy of this should it be required.

Therefore, it stands to reason that the published July 2018 draft Editorial Policies are as inadequate as the 2004 Editorial Policies in addressing any current and future contraventions of the sponsorship regulations.

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The SOS Coalition and Media Monitoring Africa are not based within the SABC and as such, concede that we do not have additional objective evidence beyond the contravention of sponsorship regulations in the current matter.

The statement made by SOS and MMA in paragraph 7 of our complaint is based on anecdotal reports received from internal SABC sources.

It is on the basis of these reports that we humbly requested that the regulator be the entity to investigate the SABC and verify for itself, that there is, indeed no ongoing sponsorship contraventions in SABC programming.

It is our humble request to the regulator, that the CCC proceed and conduct an independent investigation, on behalf of the public, into the programming practices at the SABC and ensure that there is compliance with the regulations on the sponsorship of programming.

[8] The SABC published the following statement:

SABC STATEMENT ON DEPARTMENT OF SOCIAL DEVELOPMENT PAYMENT FOR AN  
INTERVIEW

Johannesburg, Friday, 19 January 2018 – The South African Broadcasting Corporation (SABC) Board’s News and Editorial Committee has now met and considered the payment of R149,000, yet to be received, from the Department of Social Development for the interview broadcasted on 7 and 8 December 2017 on Real Talk with Anele.

After receiving a detailed report from Management, the Board Committee reached the following conclusions on the broadcasting of these particular episodes:

- a. The SABC did not comply with its own editorial policies on sponsorship of programmes, which requires that the sponsor’s association with the programme has to be stated clearly, both before and after the programme. In this case, this was not done.
- b. The SABC does not charge for interviews, and this was a breach of organisational practice. We do solicit sponsorship for programmes where it is part of a marketing campaign to communicate a departmental or other client programmes or policies.
- c. There has been a breakdown in internal controls and processes in this specific instance.

In order to ensure that this does not happen again, the SABC is taking the following steps. Firstly, as part of the current SABC Editorial policy review, we will ensure that any grey areas with respect to sponsorship of programming are clarified and strengthened. The SABC will soon publish the new draft Editorial Policy for further public comment.

Secondly, the Board News and Editorial Committee has instructed management to immediately look at strengthening upward referrals, and ensure that measures are taken that staff across different genres, including entertainment are well-versed and compliant with Editorial Policies and ICASA regulations. Thirdly, that management will inform GCIS that the SABC will not be invoicing for the R149,000, which was to be paid for the interview. The SABC takes full responsibility for these lapses and breaches in editorial control, and wishes to communicate that the presenter and production company of Real Talk with Anele acted based on SABC’s instructions.

The SABC is conducting an ongoing review to ensure that our policies are complied with across the organization. We are committed to cooperating with regulatory and other bodies to ensure that we remain compliant.

The public broadcaster competes with private sector media players for government spend on advertising, sponsorship and marketing revenue. We shall continue to do so

aggressively, without compromising our public mandate and our editorial independence, integrity and control.

The SABC remains committed to restoring the integrity of the public broadcaster and all its services, and will continue to act where there are breaches. The Committee is satisfied that these lapses were as a result of our Editorial Policies not being sufficiently integrated in our Entertainment division and that the breaches were not intentional. As stated, we will ensure that standards are lifted across divisions.

The SABC News and Current Affairs division was in no way involved in this matter. We assure the public that our News and Current Affairs Division adheres to our policy of journalistic integrity and editorial independence.

### **FINDING BY THE CCC**

[9] The CCC has considered the above documents and argument on behalf of the SABC at the hearing. It has come to the following conclusion:

(a) There is no limit to the time within which a complaint may be filed directly with the CCC in terms of section 17B of the ICASA Act. In contrast to section 17B, section 17C requires that the *Authority* refers a matter to the CCC within 40 working days. The SABC has argued that the complaint was filed at a stage when the matter was no longer in the public interest. Although it is true that the public might not find a matter to be relevant after the lapse of time, the core of the matter is that there was a contravention of the Regulations by the SABC, which it has conceded. Thus even if the interest of the public has faded away in the matter, the legal meaning of “public interest” differs from that which is “interesting to the public.”

Thus in *Financial Mail (Pty) Ltd and Others v Sage Holdings Ltd and Another* 1993 (2) SA 451 (A) Corbett CJ said (at 464C-D): “(1) There is a wide difference between what is interesting to the public and what it is in the public interest to make known . . . (2) The media have a private interest of their own in publishing what appeals to the public and may increase their circulation or the numbers of their viewers or listeners; and they are peculiarly vulnerable to the error of confusing the public interest with their own interest...”<sup>8</sup>When one

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<sup>8</sup> Quoted with approval by Hoexter JA in *Neethling v Du Preez; Neethling v The Weekly Mail* 1994 (1) SA 708 (A) at 779 and Hefer JA in *National Media Ltd v Bogoshi & Others* 1998(4) SA 1196(SCA) at 1212.

considers the the penalties which, upon a finding that there has been a contravention, have been prescribed by ICASA – in fact a maximum of R500 000 – the seriousness of the Regulation becomes clear.

(b)“Public interest” thus has a different connotation in law. In any case, the absence of public interest is not a defence against the contravention.

(c) The CCC has, however, taken note that the SABC has taken steps to ensure that this kind of error is not repeated. Of course, no one can guarantee that the same error is not made in future but, at least, the matter has been considered by the SABC and would be included in its editorial guidelines. In fact, it is more than a guideline but part of a set of Regulations enforceable by ICASA on the advice of the CCC.<sup>9</sup> The Regulations provide as follows:

1.2 “category two contravention”, means a contravention of:

1.2.1 sections 37,55(1), 56, 57(9) and 72 of the Act;

1.2.2 regulations issued by the Authority in relation to the regulation of advertising, infomercials and programme sponsorship;

1.2.2 any licence conditions pertaining to programming and advertising as set out in the relevant schedules to the licence;

1.2.3 any licence conditions pertaining to the promise of performance by the licensee, as set out in the relevant schedule to the licence; and,

1.2.4 any licence conditions pertaining to human resources requirements to be fulfilled by the licensee as set out in the relevant schedule to the licence.

(d)The maximum fine that may be imposed, for this contravention is stipulated as R500 000.

However, alternatives may also, in accordance with the ICASA Act, be considered. Thus section 17E provides as follows as to the different alternatives which may be considered by the CCC in its advice to Council as to an order:

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<sup>9</sup> Regulations regarding fines and penalties... Published under General Notice 3002 in *Government Gazette* 24070 of 13 November 2002.

## 17E. Decision by Authority

- (1) When making a decision contemplated in section 17D, the Authority must take all relevant matters into account, including -
  - (a) the recommendations of the Complaints and Compliance Committee;
  - (b) the nature and gravity of the non-compliance;
  - (c) the consequences of the non-compliance;
  - (d) the circumstances under which the non-compliance occurred;
  - (e) *the steps taken by the licensee to remedy the complaint; and*
  - (f) *the steps taken by the licensee to ensure that similar complaints will not be lodged in the future. (accent added)*
  
- (2) The Complaints and Compliance Committee may recommend that one or more of the following orders be issued by the Authority, namely -
  - (a) *direct the licensee to desist from any further contravention;*
  - (b) direct the licensee to pay as a fine the amount prescribed by the Authority in respect of such non-compliance or non-adherence;
  - (c) direct the licensee to take such remedial or other steps[not] in conflict with this Act or the underlying statutes as may be recommended by the Complaints and Compliance Committee;
  - (d) where the licensee has repeatedly been found guilty of material violations -
    - (i) prohibit the licensee from providing the licensed service for such period as may be recommended by the Complaints and Compliance committee, subject to the proviso that a broadcasting or communications service, as applicable, must not be suspended in terms of this subsection for a period in excess of 30 days; or
    - (ii) amend or revoke his or her licence; and
  - (e) direct the licensee to comply with any settlement.

Having regard to the fact that the SABC conceded its error and has taken steps to ensure that no repetition takes place, the CCC has come to the conclusion that it would not be fitting to order a fine.

However, if the SABC repeats this contravention the present finding will be taken into account in deciding on the order to be advised to Council. It should, of course, be mentioned that had the money indeed been paid, the SABC would have had a duty to repay the money, since the agreement to pay was invalid in law.<sup>10</sup>

#### **ORDER ADVISED TO COUNCIL**

It is advised that the Council of ICASA make the following order in terms of section 17E(2)(a) of the ICASA Act:

That the SABC be directed to desist from any further contravention of Regulation 5.9 of the *Regulations Relating to the Definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of Broadcasting Activities* – published under Government Notice R426 in Government Gazette 19922 of 1 April 1999 and amended by GN R551 GG23389 10/5/2002.



12/11/2018

JCW VAN ROOYEN SC

THE MEMBERS OF THE CCC AGREED WITH THE JUDGMENT.

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<sup>10</sup> Cf. *Tecmed (Pty)Ltd v Hunter and Another* 2008 (6) SA 210 (W) and the authorities referred to in the judgment. The *condictio ob turpem vel iniustam causam* would be applicable to claim the money paid back. It is unlikely that an exception would be applicable as stated in *Jajbhay v Cassim* 1939 AD 537.

