



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 23 MAY 2024

CASE NO: 473/2024

BERTHA KGOKONG

COMPLAINANT

V

SABC SAFM

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councilor Yolisa Kedama – Member
Mr Monde Mbanga - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member

FROM THE OFFICE OF THE CCC:

Meera Lalla - Acting CCC Coordinator
Thamsanqa Mtolo - CCC Assessor
Amukelani Vukeya – CCC Administrator

LEGAL REPRESENTATION FOR PARTIES

For the Complainant – Bertha Kgokong

For the Respondent - Mr Nyawo
Mr N Shibambo
Ms Monyela

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

- [1] The DA submitted a political advertisement to the SABC for broadcasting on its broadcasting services. The political advertisement depicts the South African national flag burning.
- [2] The SABC refused to broadcast the political advertisement. The reasons thereof are not relevant for purposes of this judgment.
- [3] The DA political advertisement, however, was broadcast on various other platforms including social media.
- [4] Not surprisingly, the DA's political advertisement stimulated vigorous debate in the public arena. It also drew criticism and complaints, some of which were outside the jurisdiction of the CCC.

COMPLAINT

- [5] The complaint in this matter concerns a talk show in SAFM.
- [6] On 13 May 2024, Ms Bertha Kgokong (the Complainant), lodged a complaint against the SAFM.
- [7] The complaint emanates from a debate initiated by SAFM when they invited listeners to comment about the DA's Political Advertisement in which the South African flag was depicted burning.
- [8] As to be expected, listeners were eager to have their say and responded to the invitation in their numbers.
- [9] One SAFM listener, Bertha Kgokong, (Ms Kgokong), was not impressed that the SAFM devoted what she thought was excessive time to one topic - the DA's

Advertisement depicting a burning South African flag. She thought that SAFM was unfairly promoting the DA

[10] In her view, by discussing the advertisement, in the manner that it was presented, the SABC provided the DA, as a political party, excessive exposure relative to other political parties.

ALLEGED CONTRAVENTIONS

Regulation 14(4)(a)

[11] The Complainant alleged that:

3.1 The Respondent (SAFM) contravened Regulation 14(4)(a) of the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations of 2014, as amended (the Regulations). The regulation states:

"A broadcast service licensee that broadcasts PEB must: (a) must make available, every day, throughout the election period, twelve (12) time slots of forty (40) seconds each for the broadcast of PEB excluding the tail disclaimer".

[12] The Complainant alleged that the Respondent's coverage of the DA's Political Advertisement was excessive and that the continuous focus on the Democratic Alliance's incident "*of burning the flag*", effectively created a PEB outside of the regulated time slots, thereby providing undue advantage to the Democratic Alliance.

Regulation 4(14)(d)

The Respondent is alleged to have contravened Regulation 4(14)(d) of the Regulations. Regulation 4(14)(d) states that:

"Party Political Broadcasts ensure that all PEBs broadcasts are clearly identified through standard pre-recorded concluding message (tail) disclaimer"

[13] The Complainant alleged that by failing to properly identify these mentions (broadcasts) as a form of promotion, the Respondent contravened this subsection. The Complainant stated that this was misleading the audience into perceiving the coverage as standard news rather than a political broadcast.

Regulation 2(1)(a) of Annexure B

The Respondent is alleged to have contravened Regulation 2(1)(a) of Annexure B of the Regulations read with section 59(1) of the Electronic Communications Act of 2000.

Regulation 2(1)(a) states:

"If during an election period, the coverage of any broadcasting service licensee extends to the field of elections, political parties or independent candidates and issues relevant thereto, the broadcasting licensee concerned must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties and independent candidates equitably."

[14] The Complainant alleged that the Respondent's coverage appears to have failed in providing balanced opportunities for conflicting views, focusing predominantly on the DA without giving equal airtime to other parties.

THE RELIEF SOUGHT

[15] The Complainant requested the CCC to investigate the SAFM's broadcast practices on the specified date to assess whether they were in breach of the stated regulations. Should violations be found, she urged the CCC to implement measures that ensure SAFM adheres to the required standards of equitable and balanced reporting, particularly during critical electoral periods.

THE SABC's DEFENCE

[16] The SABC admitted that the mentioned shows at SAFM discussed the DA advertisement depicting the burning of the national flag. It, however, denied any

wrongdoing.

[17] In addition, it stated that it should be noted that SAFM is a talk station wherein listeners are free to talk about any issue of public interest.

SUBMISSIONS

Regulations 4(14)(a) and Regulation 4(14)(d)

[18] The Complainant submitted that the SAFM appeared to transform the incident (the DA's depiction of a burning South African flag), into a virtual Party Election Broadcast (PEB) for the DA, and accordingly should have complied with the provisions of Regulation 4(14).

[19] Regulation 4(14) of the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014, a broadcasting service licensee (BSL) that broadcasts PEBs must ensure they adhere to the guidelines stipulated therein. Specifically:

Regulation 4(14)(a): PEBs must be allocated daily, ensuring equitable exposure. The continuous focus on the DA in identifying effectively created a PEB outside of the regulated time slots, thereby providing undue advantage.

Regulation 4(14)(d): PEBs must be clearly identified with disclaimers. By failing to properly identify these mentions as a form of promotion, SAFM contravened this requirement, misleading the audience into perceiving the coverage as standard news rather than a political broadcast.

[20] As the SAFM did not adhere to the guidelines above, it fell foul of the Regulation, submitted the Complainant.

[21] On behalf of the Respondent it was submitted that what the Complainant referred to as a PEB, was not a PEB but rather a talk show on a topic of public interest. For that reason, the guidelines in respect of Regulation 4(14) were not applicable.

Section 59(1) of the ECA

[22] Section 59(1) of the ECA provides:

“If during an election period, the coverage of any broadcasting service extends to the fields of elections, political parties and issues relevant thereto, the broadcasting service licensee concerned must ... treat all political parties equitably.”

[23] The Complainant submitted that by allowing callers to discuss the DA’s political advertisement in the morning and in the afternoon shows, without mentioning other parties, the SABC was giving the DA an undue advantage over other parties.

DISCUSSION

[22] It is important to note that a virtual PEB is not defined in the Act or in any of related legislation.

[23] The Complainant defined a “virtual PEB” as follows:,

“ ... coverage that is not formally identified as a PEB but functions in the same way as the PE does.”

[24] It is not clear where the Complainant sourced this definition from as it does not appear in any of the applicable legislations.

[25] The “Virtual PEB” is a term created by the Complainant and is not defined in either the ECA or the Regulations. For that reason, it cannot assist the CCC to reach its decision.

[26] The PEB is defined in Chapter 1 of the ECA.

“party election broadcast” means a direct address or message broadcast free of charge on a broadcasting service and which is intended or calculated to advance the interests of any particular political party”

[27] A PEB is a pre recorded political message that a political party or independent candidate is afforded to submit to a BSL for broadcast without paying for it. PEBs are scheduled by ICASA, and broadcasters are expected to comply with that schedule. The discussions referred to by the Complainant are in no way part of the ICASA schedule and were not a pre-recorded political message, submitted the SABC.

[28] On behalf of the SABC, it argued that the SAFM is a talk station where any topic of national interest is put on the table for discussion by listeners. The DA's Advertisement was such a topic and to refuse to air the views of the public on such a topic of public interest, would have amounted to censorship.

[29] The CCC agrees. There is no evidence that SAFM's talk show was turned into a PEB or something similar.

[30] First, there was no suggestion that the SAFM talk show was initiated by the DA or that the talk show was intended to advance the interests of the DA.

[31] In addition, there was no suggestion that the DA or its representatives were involved in the debate. From the facts before the CCC, it can be deduced that these were callers or listeners who had an interest in the debate. Divergent views were expressed, whether positive or negative.

[32] It has not been suggested that SAFM stopped any of the callers from airing their views. So, it cannot be correct to say that the DA, as a political party was promoted by the debate.

[33] The complaint, therefore, that this was a PEB, clothed as news cannot stand.

[34] Accordingly, there has been no contravention of Regulations 4(14) (a) and Regulation 4(14)(d).

Section 59(1) of the ECA

[35] Section 59(1) provides for equitable treatment of political parties by broadcasting service licensees.

[36] By stating that the DA was afforded undue advantage over others, the Complainant was suggesting that SAFM was guilty of not treating political parties equitably.

[37] It is so, that the views expressed extended to issues relating to a political party, (in this case the DA). However, it must be noted that this was a news item over which the SABC has editorial control and only it could decide how to run a talk show.

[38] In the present case, SAFM invited listeners to call and discuss issues related to the controversy surrounding the DA's advertisement depicting a burning South African flag.

[39] It was not suggested that there was another equally controversial political advertisement of another political party that was ignored. It was also not suggested that the DA had a say on how the talk show was run. It was run by the SAFM and in view of the above, the allegation that SAFM failed to comply with section 59(1) has not been proven.

CONCLUSION

[40] The Complainant lodged a formal complaint against SAFM for their coverage on May 7, 2024. In her complaint she stated that she believed the talk show unfairly promoted the DA during the election period. According to her, SAFM continually mentioned an *"external advertisement depicting a burning flag, associated with the DA, throughout its morning breakfast and afternoon drive shows."*

[41] According to the Complainant, the SAFM, in handling the talk show repeatedly mentioned the DA. This had the effect of unduly focusing on the DA, thereby providing them with *"excessive exposure relative to other political parties."*

[42] The phrase "excessive exposure" is problematic because it has not been defined. What the Complainant regards as "excessive exposure" might be regarded by another as "under exposure". So, this is not an issue to be decided by the CCC.

[43] In terms of the ECA and the regulations the SAFM did no wrong in running the show in which the DA's political advertisement was discussed.

[44] There is no denying that the discussion that ensued about the DA's PA, which depicted a burning South African national flag, was a topical issue of the day and a newsworthy item.

[45] The Complainant could not contradict that. Accordingly, allegations, that the SABC, (SAFM), by allowing a discussion relating to the political advertisement, in the manner that it did, provided the DA with "excessive exposure relative to other political parties", has not been proven.

[46] I say this because neither the ECA nor the Regulations make mention of a cap which must not be exceeded when discussing topical issues of national interest. The issue of excessive exposure does not arise in law.

[47] SAFM was within its rights to engage its listeners on such a debate.

[48] There is no obligation SAFM to comply with regulation 4(14)(a) during news coverage and public debates. This regulation only applies to PEBs as provided for in the Regulations.

[49] Equally, the charge relating to regulation 4(14)(d) - that SAFM failed to identify a PEB, lacks substance. This charge is also clearly premised on a misconception of what a PEB is.

[50] On a proper reading of regulation 4(1)(d), it requires that there must be a PEB first for a BSL to comply. There was none in this case. It was, therefore, not possible for SAFM to identify a non-existent PEB.

[51] The Complainant alleged that "SAFM's coverage failed to balance the discussion, focusing predominantly on the DA without giving equal airtime to other parties "

[52] The Complainant thus complained that SAFM breached regulation 2(1)(a) of Annexure B read with section 59(1) of the Electronic Communications Act 36 of 2005 (ECA).

[53] The Complainant did not provide evidence or even an allegation that another party had a similar PA but the SAFM chose to focus on the DA and ignored the other. It is only the DA that produced a controversial PA that attracted debate on various

news platforms across the country.

[54] It was submitted, on behalf the SABC (and this was not contradicted), that contrary to the Complainant's allegations that SAFM gave undue exposure to the DA, the coverage of this matter by SAFM was not positive or complimentary to the DA. The debate on SAFM attracted conflicting views with the majority of callers and contributors sharply criticising the DA's PA.

[55] In view of the above, the complaint by the Complainant must fail.

FINDING

[56] The complaint lodged by the Complainant in this matter is dismissed.

TMMasipa

Judge Thokozile Masipa
Chairperson of the CCC

Date: 27 May 2024