

IN THE TRIBUNAL OF BROADCASTING COMPLAINTS
COMMISSION OF SOUTH AFRICA

CASE NO: 05/2011

In the matter between:

**SOUTH AFRICAN BROADCASTING
CORPORATION LIMITED**

Applicant

and

MAIL AND GUARDIAN MEDIA LIMITED

First Respondent

SAM SOLE

Second Respondent

In re:

MAIL AND GUARDIAN MEDIA LIMITED

First Applicant

SAM SOLE

Second Applicant

and

**SOUTH AFRICAN BROADCASTING
CORPORATION LIMITED**

Respondent

ANSWERING AFFIDAVIT

myj *N.P.*

I, the undersigned



NICHOLAS DAWES

do hereby declare on oath that:

1. I am an adult male employed as the Editor in Chief of the Mail & Guardian newspaper which is owned by M&G Media Limited. I am authorised to depose to this affidavit.
2. The facts contained in this affidavit are within my personal knowledge, except where so stated or obvious from the context, and are true and correct.
3. I have read the founding affidavit deposed to by Thabang Sylvester Mathibe ("Mathibe"). I respond to the allegations in his affidavit as set out below.
4. **Ad paragraph 1**

The contents of this paragraph are noted.
5. **Ad paragraph 2**

I deny that the averments contained in the founding affidavit of Mathibe are true and correct.

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6. Ad paragraph 2 to 5

The contents of these paragraphs are admitted.

7. Ad paragraph 6 to 8

I point out that if, as appears to be alleged by the SABC, the Chairperson does not have the power to suspend an order of the BCCSA pending the outcome of a review application, no body other than the High Court itself would have this power, and in the absence of any application to the High Court to suspend the order of the BCCSA the SABC would be obliged to comply with that order.

8. Ad paragraph 9

The contents of this paragraph are denied.

9. Ad paragraph 10

The Chairperson of the BCCSA decided both the complaint and the application for leave to appeal in a transparent and proper manner. The reasons for his decisions show that he applied his mind to the issues before him and came to the only reasonable finding on the facts. There is no basis for the suggestion that he will not adjudicate the current application in a proper manner.

10. Ad paragraph 11

The contents of this paragraph are denied. The basis upon which this submission is made is not clear.

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11. Ad paragraph 12

The contents of these paragraphs are noted. Should the SABC apply for review of the decision of the BCCSA such review application will be opposed by the Mail & Guardian and Mr Sole.

12. Ad paragraph 13

12.1. The contents of this paragraph are denied. It is submitted that there is no valid reason the Chairperson ought not to decide this application. The Chairperson, in order to decide on the application to stay the order of the BCCSA will need to know the grounds upon which the SABC brings the review application.

12.2. The BCCSA came to the correct findings on the facts before it. The order of the BCCSA that the SABC broadcast a summary of its findings is in line with clause 14.2 and 14.3 of the BCCSA Constitution which empower the Chairperson to reprimand any respondent found guilty of an infringement of the Code and to direct that a correction and/or a summary of the findings of the Tribunal be broadcast by the respondent in a manner determined by the Tribunal.

13. Ad paragraph 14 and 15

The contents of these paragraphs are noted.

A handwritten signature in black ink, appearing to be 'N.P.' with a stylized flourish above it.

14. Ad paragraph 16 and 17

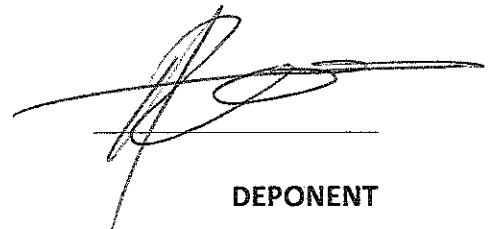
14.1. It is submitted that the BCCSA was justified in its findings as between the parties, the Mail & Guardian, Mr Sole and the SABC, on the facts before it. The decision of the BCCSA does not implicate Mr Gumede and is confined to the parties to the dispute.

14.2. The SABC has not been ordered to broadcast that it rejects the correctness or truthfulness of what Mr Gumede said, merely that it broadcast allegations which were unsubstantiated.

15. Ad paragraph 18

We deny that it is necessary that the order of the BCCSA be stayed pending finalisation of the review application and complaint to the Complaints Compliance Committee which the SABC intends to bring. These proceedings may take a lengthy period of time to finalise, further delaying the broadcast of the order. This will be prejudicial to both the Mail and Guardian and to Mr Sole.

WHEREFORE I pray that the application be dismissed.



DEPONENT



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THUS SIGNED AND SWORN TO before me at Rosebank SAPS on 14/06 June 2011, after the deponent had acknowledged that he knows and understands the contents of this affidavit, had no objection to taking the prescribed oath and considered the prescribed oath binding on his conscience.

SOUTH AFRICAN POLICE SERVICE
ROSEBANK
STATION COMMANDER

2011 -06- 14

STASIE BEVELVOERDER
ROSEBANK
SUID-AFRIKAANSE POLISIEDIENST

04463510
[Signature]
Mokau Tapita Mswane
COMMISSIONER OF OATHS
RoseBank SAPS