

# BCCSA upholds "Justice Factor" right to editorial comment

 By Herman Manson: @marklives

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The Broadcasting Complaints Commission of South Africa ([BCCSA](#)) has upheld the right to editorial comment of 'The Justice Factor,' a weekly political talk and current affairs show hosted by Justice Malala and broadcast on the eNews Channel.



The complainant, an individual, felt that Malala's statements on former president Thabo Mbeki's "no crisis in Zimbabwe" comments and current president Jacob Zuma's call for lifting of sanctions against Zimbabwe, which, according to the anchor, earned him the "Loser" title on the Justice Factor Show, was "distortion of facts and outright lies."

## Complainant

The complainant, C Ngcukana, seem to have spent some time researching Malala's career, including his stint as the launch editor of the now defunct Nigerian-backed newspaper *ThisDay*. The complaint, which reads as much as a personal attack on Malala as any anything else, also refers to "gutter journalism" and calls the presenter a plumber.

In its submission on behalf of eNews attorneys Dan Rosengarten and David Feinberg of Rosin Wright Rosengarten, accompanied by Olefile Bop Tshweu (regulatory affairs executive at eNews), Justice Malala and Debbie Meyer (executive producer, current affairs at e.tv), argued that naming Zuma a loser of the week was "an honest expression of opinion and was presented in such a manner that it clearly appeared to be comment, and was made on facts truly stated or fairly indicated and referred to in compliance with clause 35.2 of the Broadcasting Code. In the result we submit that the complaint is totally without merit and must be dismissed.

As for comments relating to Mbeki saying "there is no crisis in Zimbabwe," Malala was simply quoting Mbeki directly.

**"Not an exact science"**

In its ruling, BCCSA commissioner Gerrit Olivier writes:

*“ Politics is a value-related phenomenon; it is not an exact science; the difference between what is 'right' and what is 'wrong' is generally blurred, subjective and imprecise. Politics, therefore, is about contestation in view of the prevalence of different, even conflicting, value and belief systems, opposing policies and opposing agendas; different perceptions and interpretations about social issues. People engage in politics to maximise their deeply-felt convictions about social and moral values. Conflict and contestation are, therefore, the essence, the nature of political debate. Hence disagreement, contestation, propaganda and debunking are common features, if not the essence of the political debate. Agreement across the political spectrum, particularly in party political context, is rare, if not impossible. What is 'true' is always relevant; objectivity is well-nigh impossible, hence the application of 'fairness' and 'accuracy in order to assess the merits or demerits of political contestation'. ”*

### **"Honest expression of opinion"**

In the end, the commission found that "that the comment was an honest expression of opinion and was presented in such a manner that it clearly appeared to be comment, and was made on facts fairly indicated and referred to, in compliance with clause 35.2 of the Broadcasting Code. No contravention of the Code was found by the Tribunal and the complaint was dismissed."

The BCCSA found that the naming of Zuma as 'loser' is "the prerogative of editorial opinion" and that "the right to freedom of expression permits journalists in democratic party politics to rate politicians, although everybody would not necessarily agree with the end results."

### **ABOUT HERMAN MANSON: @MARKLIVES**

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