

**APPEAL TRIBUNAL FOR THE FILM AND PUBLICATION BOARD
(HELD IN JOHANNESBURG)**

CASE NO: G/2024/TBA

In the matter between:

United International Pictures

APPELLANT

And

The Film and Publication Board (FPB)

RESPONDENT

AWARD: THE SHOWERHEAD (APPEAL DECISION)

Appeal: 04 September 2024

Decision: 09 September 2024

For Award Reasons Dated: 14 September 2024

Chairperson: Siyazi Tyatyam

BACKGROUND AND INTRODUCTION

Appellant Represented by: Independent Legal Consultant: Ben Winks

Respondent: Films and Publication Board – Legal Counsel

Mr Andrew Sepabu

1.

This is an Appeal before the Films and Publications Appeal Board Tribunal. Presiding officer is Appeal Tribunal Board Chairperson, Mr Siyazi Tyatyam. The members formed a Quorum.

APPELLANT'S SUBMISSIONS

2.

United International Pictures appealed against the decision of the Film and Publication

Board's Classification Committee ("**the Committee**") to apply an age restriction of **16 L N P SV** to the feature film *The Showerhead* ("**the Film**"). The Film, directed by Craig Tanner and produced by Craig Tanner and Anant Singh, is a documentary feature about the life and work of political cartoonist Jonathan Shapiro (Zapiro), particularly his work relating to former President Jacob Zuma. The appellant contended that the Committee's decision was unduly restrictive and punitive and that the age rating for the Film should be **13 SV**.

3.

The appellant said they accepted that the Film contains implied depictions of a threatened rape, as well as a discussion of a rape trial, which may be disturbing for younger viewers and warrant parental guidance. They argued that this classifiable element of the Film, however, is treated abstractly and discreetly, with sensitivity and care, with the result that it has only a *moderate impact* in terms of potential disturbance. They said they accepted that this potentially warrants an age restriction of **13** and a cautionary advice of **sexual violence**.

4.

In their heads of argument, the appellant further contended that the other classifiable elements – language, nudity, prejudice and sexual conduct – are *low to mild impact* and, thus, do not warrant cautionary advice, let alone an age restriction.

5.

The appellant was of the view that the Committee's decision, especially in respect of prejudice, is influenced by a misapprehension that the Films and Publications Act, 1996 ("**the Act**") allows the Film and Publication Board ("**FPB**") to police political speech, and to restrict the viewing of a film that is critical of an individual based on his character, not based on any identifiable group characteristic. In this regard, they argued that this is wrong in law and is deeply dangerous as a practice – redolent of the pre-democratic censorship of political speech, from which the Act was meant to signal a decisive break.

6.

The appellant stated that they grounded their appeal on the Committee's misapplication of

the Act and the Guidelines.¹

7.

The appellant's heads of arguments also stated that they reserved the right to contend, in any other forum, that the Act and/or the Guidelines are unconstitutional.

8.

With regard to the Committee's discussion of "themes", "prejudice", and "social considerations", the appellant was of the view that the Guidelines provide that the "Mild (7-9 PG)"² category "may contain complex and mature themes that may require parental guidance", thus addressing the committee's consideration of the themes of the Film as being complex, mature, strong, impact themes in as far as the committee found that younger children may be morally harmed based on the presentation of the antagonist (Jacob Zuma) and how he is depicted as corrupt and as a degenerate.

9.

Concerning the Committee's finding that the Film contains prejudice that is thematic in the sense that the antagonist, which is Jacob Zuma in this case, is discriminated against by the protagonist and goes as far as calling him names, the appellant argues that this finding is legally and factually wrong in as far as Prejudice, in the context of the Act and the Guidelines, must be based on an "identifiable group characteristic", such as race, religion, sex or ethnicity, not on an individual's character or characteristics.

10.

Concerning the classification of sexual violence, the appellant noted that this was a significant discussion in the film as far as it dealt with Mr Zuma's rape trial and Zapiro's use of the metaphor of rape to describe the abuse of the justice system (personified by Lady Justice) by Mr Zuma and various others. In this regard, they argued that the Film did not

¹Classification Guidelines for the Classification of Films, Games and Certain Publications, published under GN 2218 in GG 46649 of 1 July 2022 ("**Guidelines**").

² Guidelines, section 4.2(5)(d).

contain any scenes of actual sexual violence as the references are either verbal or implied in cartoon form. They stated that they further accept that the fairly frequent verbal references to rape and visual references to implied rape fall within the “Moderate (13)” range described in the Guidelines, which permits “scenes of implied or verbal low impact sexual violence, with no noticeable effects, but no scenes of actual sexual violence, arguing that in this regard the Film’s age rating should be 13 and cautionary advice of SV.

11.

It was further argued that pertaining to the classifiable elements of language, nudity, sexual conduct and violence, while these are all present in the Film, they are all low impact, such that they do not warrant cautionary advice, let alone a 16 age restriction.

RESPONDENT’S SUBMISSIONS

12.

It was argued on behalf of the Respondent that the classifiable elements identified in the Film constitute language, nudity, prejudice and sexual violence. Sexual conduct and violence are brief and isolated with low impact and, therefore, do not warrant consumer advice but for noting. The respondent further argued that the level of the impact of the occurrence of language is strong and occurs infrequently. Nudity occurs frequently in the Film, according to the Classification Committee, and carries a moderate impact, although in a non-sexual context. Concerning prejudice, the respondent argued that it occurs infrequently and it is conveyed at a moderate level of impact.

13.

The respondent contended that the cumulative impact of the classifiable elements of the film is a strong (16). With strong impact themes, infrequent strong impact language linked to prejudicial language, fairly frequent moderate impact non-sexual nudity and thematic moderate impact prejudice.

14.

Pertaining to language, the respondent argued that the said Film contains infrequent scenes

of strong impact language; such strong language includes prejudicial slurs that are not directly meant to demean. They argued that younger children are said to be impressionable and may imitate the crude language out of context and without understanding in casual or/and formal settings especially because it is presented without disapproval and this could have an impact, particularly on younger children as they lack independent moral judgment. In this regard, the respondent was of the view that in terms of Classification Guidelines, under 16 age rating when it comes to language, content may contain only scenes of implied, verbal or actual strong impact language.

15.

For the classifiable element of nudity, the respondent noted that it has been classified in the Film as being of moderate impact level in a non-sexual context, which occurs infrequently. They argued that even though the scenes of nudity are justified within context, they still maintain their controversial nature, further conceding that the nudity is presented in a fantastical manner; however, it is heightened to a moderate impact due to its intrinsic link to the content's thematic element.

16.

Pertaining to prejudice, the respondent argued that the Film contains moderate impact prejudice (infrequent) that occurs as prejudicial language in content. As such, younger children may suffer moral harm as the use of prejudicial language aimed at demeaning others may be misconstrued due to a still developing cognitive reasoning ability. Further, abstract perceptions such as one of bias may prove to be mature for younger minds who may incorrectly interpret the intended context.

17.

The respondent intimated that when it comes to sexual violence, the Film contains Moderate impact fairly frequent implied sexual violence. It noted that there is implied rape in film, while conceding that the intention of the filmmaker is to retell events that occur in the past. It was of the view that while the content contains historical, educational merits it may still be triggering to victims of rape and may also cause psychological trauma to younger sensitive children. Furthermore, scenes of verbal and textual sexual violence or rape may be

beyond their tolerance level and they might not understand the historical and dramatic context in which it is presented. As such, it was of the view that with their lack of cognitive, psychological, emotional, and moral maturity, the younger children are not developed enough yet to distinguish right from wrong to make the correct moral and behavioural choices in life yet, and they may not be mature enough to understand the context of film.

18.

For all of the above reasons, the respondent submitted that the classification rating and consumer advice of the FPB for the Film, namely, 16 L N P (SV)

REASONING AND FINDING

19.

In deliberating on the classification of the Film, the Appeals Tribunal is guided by the Classification Guidelines, The Act, and the Constitution. The main purpose of the Guidelines is to protect children from exposure to potentially disturbing and harmful material and from premature exposure to adult experience. In assessing the various classifiable elements identified, regard must be had to the impact of the classifiable elements in the context of the film. The Guidelines contain a list of classifiable elements and it is apparent that the cumulative impact of the various scenes within a film should be considered in determining the appropriate classification. Consideration is given as to whether the intensity and frequency of the classifiable element is such that it could be disturbing or harmful to children of a particular age group or prematurely expose them to adult experiences. Significantly, this assessment must be in context of the film and having taken into regard the positive or redeeming features of the film.

20.

Pertaining to the classifiable element of language, both the appellant and respondent were in agreement on the instances in which crude language is used. The Guidelines stipulate that “Regardless of the level of age restriction, the public must be alerted to the occurrence of

strong language of a mild, moderate, strong or very strong impact”.³ As such, the advisory was warranted in light of the crude language used in some instances in the film. In this respect, the content of the film contained only scenes of implied, verbal or actual moderate impact language, aligned with a Moderate (13) rating.⁴

21.

The film contained no instances of actual nudity as the depictions of genitalia were either in the form of cartoon sketches, or artistic works.

22.

There were no instances of prejudice in the film as the respondent’s citation of these were based on actual and historical statements made by the film’s subject, and were therefore justified by the context.

23.

Both the Respondent and the Appellant agreed that the film should carry the consumer advice of SV. In reference to sexual violence, for a Moderate (13) rating, the Film may contain only scenes of implied or verbal low-impact sexual violence, with no noticeable effects, but no scenes of actual sexual violence, as per the Guidelines⁵. The Film did not contain any scenes of actual sexual violence but there is language used around the metaphor of the raping of Lady Justice and the frequent reference to Mr Zuma’s rape trial, which are dominant themes in the film. These can be categorised as moderate because they are instances of implied or verbal low-impact sexual violence.

24.

While it is of paramount importance to protect children from material that may be potentially disturbing and harmful, it is also important to appreciate that children are entitled to be exposed to high quality expression which can develop their cognitive and critical skills and also to that which entertains. Therefore, freedom of expression does not

³ Guidelines 2.2(3)(f)(ii)

⁴ Guidelines 4.2(7)(v)

⁵ Guidelines 4.2(7)(ix)

simply refer to the freedom of expression of the distributors and of adults but also to that of children.

Section 28(2) of the Constitution of the Republic of South Africa 1996 requires the consideration of the child's best interests in matters involving children or affecting them. Understandably, this would include not exposing children to harmful material prematurely but, equally understandably, it includes the consideration to allow children to develop as thinking individuals. The best interests of the child will not be served if children are prevented from engaging with expression that can enable them to form and express opinions and views on a variety of issues.

25.

As a result of the above, the appeal is successful and the following order is made:

The initial rating of the film *The Showerhead* 16 L N P (SV) as rated by the FPB Classification board is overturned and the film, *The Showerhead*, is here by reclassified as 13 L SV.

With Consensus of the Tribunal:

Mr. Siyazi Tyatyam (Chairperson)

Ms. Manko Thalitha Buffel

Ms. Sohani Natasha Chundhur

Dr. Litheko Modisane

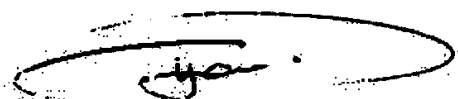
Dr. Sisanda Nkoala

Ms. Nomaswazi Rachel Shabangu-Mndawe

Mr. James Shikwambana

Ms. Shandukani Mulaudzi

Dated 14 September 2024

A handwritten signature in black ink, appearing to be the name 'Siyazi Tyatyam', written in a cursive style.