

New ruling puts court trials in the spotlight

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On 21 June 2017, the Supreme Court of Appeal (SCA) handed down a judgment allowing video recording of a trial. This is seen as a victory for media freedom and open justice.



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The ruling was in the appeal by Henri van Breda and the National Prosecuting Authority (NPA) against the decision by the Western Cape High Court to allow the first respondent, Media24, access to record and broadcast the murder trial of van Breda, who is accused of murdering his parents and brother. Webber Wentzel acted on behalf of Media Monitoring Africa (MMA), the amicus curiae.

The High Court ordered that Media24 be permitted to install two stationary, unmanned video cameras in the courtroom to record and broadcast the entire proceedings, except the filming, recording and photography of van Breda's sister.

Both van Breda and the NPA appealed the decision of the High Court to the SCA. While van Breda had no objection to the recording and broadcast of counsels' argument and the judgment of the High Court, the NPA advocated for a blanket ban on the broadcast of any part of any criminal trial (not just the trial of van Breda).

Webber Wentzel, acting on behalf of MMA, sought to persuade the SCA to uphold the freedom of expression of broadcast journalists and to recognise the importance of broadcasting criminal trials, in order to ensure that justice is seen to be done by as many people as possible.

The SCA accepted the arguments of MMA, holding that in order to give effect to the principle of open justice, court proceedings must be meaningfully accessible to any member of the public who wishes to be apprised timeously and accurately of the court proceedings. Broadcasting proceedings allows such instantaneous and accurate presentation of information to occur. The SCA held further that there could be no logic in permitting journalists of the print media, but not the broadcast media, to utilise his or her technology and method of communication. The SCA went on to state that the right to freedom of expression confers on the media the right to determine what means of communication it wishes to use in order to relay information to the public.

Witness contamination not valid point

The NPA and van Breda both argued that the broadcast of criminal trial proceedings may cause witnesses to be intimidated and will result in witnesses tailoring their evidence based on the testimony of others.

The SCA held that courts are public places and members of the press and the public are already free to be present. Furthermore, judges are able to determine whether a witness' testimony has been tainted by exposure to the testimony of others due to the pivotal role that cross-examination plays.

The SCA however ruled that even without the broadcast of trials, the risk of witnesses having access to another's testimony already exists due to live reporting via social media platforms or court reporting contained in traditional print media.

The SCA held that it would always remain open to a court to direct that some or all of the proceedings before it may not be broadcast at all or may only be broadcast in a particular form. The starting point is that broadcast of the entire proceedings of any court case can occur - unless any party makes a valid objection which is upheld by the judge.

Binding precedent

The SCA has created a precedent binding on all courts, in terms of which the default position is now that all court proceedings may be broadcast, unless a witness or accused objects to the broadcast of his or her testimony, in which case such witnesses will be required to assert such objection before the trial judge by specifying the grounds for the objection.

The trial judge will then have the discretion to permit or prohibit the broadcast of such testimony, taking into account the particular circumstances of the case. According to the SCA, courts may no longer restrict the broadcast of proceedings unless the prejudice to a party is demonstrable and there is a real risk that prejudice will occur and not merely that there is a possibility that prejudice may occur.

The matter has been remitted to the High Court for reconsideration in accordance with the principles set out in the SCA judgment.

The Webber Wentzel team consisted of Dario Milo and Lavanya Pillay.