
FINAL AWARD: BARAKAT

Chairperson: C Mamathuntsha

1. The Appellant, Indigenous Film Distribution launched an appeal on the 25 August 2020 with the Films and Publications Board in terms of Section 20 (1) of the films and publications Amendment Act of 2009, against the classification of the film Barakat 16DLPSV. The appellant sought in terms of their Notice of appeal a lesser restrictive classification of 13 as they submit the rating of 16 is too harsh.
2. In its grounds of appeal, the appellant argued that the age rating given by the classification committee is too harsh and that although the themes present are acknowledged, the rating is slightly harsh and misplaced.
3. Further, in its grounds of appeal the appellant submitted that the classification guidelines for the Classification of Films, Interactive Computer Games and Certain Publications, 2019 details that classifiers proceed from the least restrictive to more restrictive classification in an endeavor to balance various rights and freedoms in contention. The Guidelines require, as a guiding principle, that all decisions consider context, impact, and release format of the material.
4. The appellants submitted further that in terms of the guidelines, Films are classified into categories on the basis of the context, the impact of the classifiable elements and the release format. All three requirements must be considered and the content that is rated in any category should fulfill all stated requirements. Should it not, classifiers should consider the higher or lower category, depending on the merits.
5. The appellant argued further that a film could be rated 13 (moderate) in the following instances:
 - 5.1. The content may be threatening, disturbing or harmful to children younger than 13,
 - 5.2. The theme causes no more harm to children aged 13 and older;
 - 5.3. Single or cumulative occurrences of classifiable elements may be realistic;
 - 5.4. Occurrences of significant classifiable elements may be realistic, Classifiable elements form part of a *bona fide* story line; The content may contain low to mild impact classifiable elements, with some elements having a moderate impact and lastly may contain accentuation techniques such as lightning, perspective and resolution.
6. The Respondent opposed this appeal and states its grounds in its heads of arguments.

7. The Respondents argued that, that amongst the main purposes of the Film and Publication Act, 65 of 1996(FP Act) is to protect children from exposure to potentially disturbing or harmful material and from premature exposure to the adult experience.
 - 7.1.They refer to Classification Guidelines and state that section 18(3) of the FP Act directs the FPB to impose age appropriation age restrictions if the material being classified contains a scene which “may be disturbing or harmful to, or age- inappropriate to children”.
 - 7.2. They submit that the general guidelines for and principles of classification are captured in Classification Guidelines. They are a legally prescriptive and binding document, with the primary purposes to protect children from exposure to potentially disturbing and harmful material and from premature exposure to adult experience
 - 7.3.Further, the classification Guidelines prescribe mandatory classified elements that are used to classify the content of the films, games and certain publications. The classification decision provided by the Classification committee appointed by the FPB includes the age – rating and consumer advice where same indicates the classifiable elements present in the content so as to alert consumers to potentially disturbing, harmful, or age –inappropriate material, as well as to the intensity of impact, which renegees from no impact, low, mild, moderate , strong, and very strong , to extreme impact
 - 7.4.Mandatory classifiable elements must be considered when assigned an appropriate age-rating.
8. In assessing various classifiable elements identified, regard must be had to the impact of the classifiable element in the context of the film. The impact of the classifiable elements may increase in intensity in accordance with the frequency of its occurrence, realism, detail and techniques used. The nature of the theme of the film similarly affects the impact of the classifiable elements encompassed in the film.
9. In conclusion, the Respondent pointed out that importantly, the public has the right to be protected from potentially disturbing and harmful content, and from unsolicited exposure to materials that some may find offensive.
10. The above constituted the basis of the parties arguments in support and against the Appeal of the film, Barakat.
11. The Appellant called the expert witness, Mr Abdu Adams who testified as a cultural expert and offered little assistance to the tribunal.

The Respondent called as its witness, Ms Petro Smith the Chief Classifier who took the tribunal on how they considered the various classifiable elements in the film.

11.1. The Classifiable Elements

11.2. **Drugs-** This element is found to be mild to moderate with a clear anti-drug message and falls within the 13 year age range.

11.3. **Language -** This element is strong by universal standards and in this regard
The cultural expert did not give a convincing argument. The language used was considered in the context of the film setting. It was considered to be normal for the Afrikaans speaking audience and may not mean anything for anyone who is not from that community. Consequently this does not make the language not strong and necessarily harmful. The use of the word “gemors” which means rubbish and not necessarily “shit’ has clearly been misinterpreted and yet consumer advisory is still necessary for a 13 year old.

11.4. PREJUDICE

The prejudice is hidden in a creative way behind the boy’s jealousy of their mother having to get married by another man after their father’s death. The element is mild even though it is not clearly approved. There are no scenes in the movie which could overtly be interpreted as religious prejudice. It is tolerable to the 13 year age range.

11.5. SEX

It is evident in the scene that sex is implied and not actual, which ultimately makes it mild and therefore falls within the 13 year age range.

VIOLENCE

In the movie, the arguments between the brothers is presented in a normal way. These are normal and daily occurrences in a home environment, which makes it tolerable on the viewers. It is our conclusion that this cannot be harmful to viewers younger than 13 years.

It is to be noted that the Appellants and the Respondent agree that the Film is light hearted and comedic in its presentation.i.e. format of the material.

Section 18(3)(d) of the Films and Publications Act states that there should be an age restriction that is appropriate if there is a scene that may be disturbing or harmful to children. From the Film and the submissions made by the Appellant, the tribunal is unable to depart from this specific provision of the Act.

DECISION OF THE TRIBUNAL

After considering all evidence and the closing written closing arguments submitted by both parties, the Tribunal has unanimously found that the Film Barakat should be reclassified and be given an age rating of 13 DPLV. The Appellant consequently succeeds in its appeal.

We are satisfied that applying the guidelines in terms of section 3 (3), the classifiable elements are mild to moderate.

We thank once again, the invaluable assistance of the Appellant Legal Representatives, Adv Moneer Rabaey and Mr Nassim Gani his instructing attorney as well as Mr Pandelis Gregoriou on behalf of the Respondent.

DATED THE 12TH DAY OF NOVEMBER 2020

Tribunal Members Present

Nonkoliso Sigcau

Lutendo Joy Malada

Muke Nondunduzo Kheswa

Manko Buffel

Sdv Lihle T Mapipa

Professor A S Magwaza