

**APPEAL TRIBUNAL DECISION
FOR THE FILM AND PUBLICATION BOARD
HELD VIRTUAL**

Case No.____/2021/0433

SANKTUARY FILMS

Appellant

And

FILM AND PUBLICATION BOARD (FPB)

Respondent

I AM HERE

Appeal heard on 14 February 2023

Decision: 14 February 2023

For Award Reasons: February 2023

INTRODUCTION

1. Appellant Represented by: Richard Anthony / Jordy Sank / Gabriella Blomberg

2. Respondent: FILM AND PUBLICATION BOARD LEGAL COUNSEL

Mr Pandelis Gregoriou

1. Act 108 of 1996
2. Appeal Tribunal Decision No. 1/2023

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This was an inaugural sitting of the Appeals Tribunal. All members of the Appeals Tribunal were present in the meeting. *I Am Here* is film that takes place during World War II, with a particular on Holocaust crimes that were committed by the Nazi German army under A. Hitler. At her 98th birthday celebration in Cape Town, a Holocaust survivor Ella Blumentha narrates her story to her kids, grandchildren and family friends.

APPELLANT'S SUBMISSION

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The Appellant seeks to lower the age classification which the film *I am here* has been given or ordered by the Classification Committee of the Film and Publication Board of 16 P SV V to 13 with no provision as to consumer advice.

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The intended audience for the film as per the appellant request is school children for grades 7 – 9 (13 – 15 year olds). The use of animation in the film by the Appellant is viewed as a palatable creative choice for younger generation.

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There is an acknowledgement in the submission of following classification elements-

Prejudice:

Holocaust education is compulsory for grades 7 – 9. Further the subject matters include Apartheid, WW II etc indicates that learners in that age brackets still grappling with this in class. The appellant therefore believes that the age 16 restriction is too high.

Sexual Violence:

The animated scene where a soldier pulls out a young Jewish woman – it is implied that this is sexual, but it is only shown as gender based violence, as he slaps her and pulled her out of the room.

Violence:

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There's innate violence that the Nazis inflicted on her due to her religion, but this is age appropriate – depicted in a palatable way through the animation and is something they engage in when they are 13 because of the CAPS syllabus.

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Tali Nates head of Johannesburg Holocaust and Genocide Centre (JHGC) who was the consultant of this film also appeals to the Board to reconsider their rating decision, as a 13+ would assist educators and learners to use this powerful film for education.

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A lot of emphasis was put on the CAPS as the motivation to allow the film to be watched in a controlled environment compulsory for South African students grades 7 – 9 (13 – 15)

RESPONDENT'S SUBMISSION

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The Respondent has classified the film and given the age-rating and consumer advice of 16 P SV V respectively.

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Set its premise and argues that the main purpose of the Film and Publication Act, 1996 (Act No. 65 of 1996) is to protect children from the exposure to potentially disturbing or harmful material and from premature exposure to the adult experience.

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Further it states the general guidelines for and principles of classification are captured in Classification Guidelines, which are legally prescriptive and binding document, with the primary purpose to protect children from exposure to potentially disturbing and harmful material and from premature exposure to adult experience.

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Classifiable elements must be considered when assigning an appropriate age-rating. It argues that assessment in regard to the impact of the classifiable element in the context of the film. The frequency of its occurrence, realism, detail and techniques determine the intensity and impact of the film.

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It identified classifiable elements in the film which consist of Prejudice, Sexual Violence and Violence.

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Prejudice:

Amongst other assessments is the persecution of Jews during WW II and the Holocaust. A Jewish man is further told he is a mixed blood mongrel.

The Classification Committee of the FPB on presentation of such evidence and determined that it is exempted from a refused classification rating section 18(3)(a)(ii) of the Film and Publication Act, 2019 (Act No. 65 of 1996).

However it argues that the Film may be emotionally and psychologically disturbing to cognitively immature viewers under the age of 16 years, and may result in emotionally harmed.

Sexual Violence:

The responded determined that the film contained various infrequent low impact verbal reference of implied sexual violence.

It argues though the film does not contain any scene or visuals of sexual violence, the nature in which the sexual violence is presented in the film may be emotionally and psychologically disturbing to younger children under the age of 13 years.

Violence:

The respondent notes that the violence presented in the film is realistic with noticeable effects of injury, bloodletting and death with the historical context of the Holocaust and occurs on a frequent basis with a visibly strong impact.

It is presented in both physical and psychological on the premise of the illustration of torture of Jews and leaving survivors traumatised. Visibility of violence is through Ella flashbacks and she recalls the story.

The Respondent determined that the visual and verbal presentation of violence that involves the killing of innocent people based on their religious beliefs within a historical context may be emotionally morally disturbing to viewers under the age of 16 years.

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Impact of the format, the respondent argues the online format which the film can be viewed where the strong impact of harmful classified elements mentioned earlier, which could be played out context, contributes to the overall classification ration, hence 16 P SV V

Findings

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Firstly, we move from the notion that the South African Constitution that was adopted in 1996 is a cornerstone of the discourse and form the bedrock and integral part of any development in the South Africa. The Bill of Rights is included in the South African Constitution as chapter 2. In Section 28, pg 11 of the Constitution of South Africa under the heading **Children** detail their rights and protection which all must abide by. Clause 28.2 'put child first' when it argues – A child's best interest are of paramount importance in every matter concerning a child.

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Secondly, read together with the Constitution of South Africa the Appeals Tribunal agrees that it is Film and Publication Act, 1996 (Act No. 65 of 1996) and the Classification Guidelines (No. 2218) that was enacted on the 1 July 2022. The Respondent argues that the Act and the Guidelines directs the Film and Publication Board to impose appropriate age restrictions classifications. The Appeals Tribunal affirmsthat the various sections referred at by the Respondent in their submission to amplify and give clarity to its decision.

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It was apparent both submission and presentation of the Appellant argued mainly for the lowering of the age restriction from 16 to 13. The Appellant did not thoroughly discuss the impact of the Classifiable Elements that are included in the Classifiable Guidelines except underplaying their impact to suit it's target and appeal.

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Both parties (Appellant and Respondent) agree that there's visible and frequent throughout the film of Classifiable Element in particularly – **Prejudice, Sexual**

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Violence and Violence. The Appeals Tribunal agrees with the Respondent analysis on the matters that are raised in its submission.

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Its a matter of concern that the Appellant is not engaging on Classifiable Elements in particular the history of South Africa struggle and indoctrination under apartheid. In South Africa there are stories and experiences that are shared with adults not children at all, depending on nature of Prejudice.

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Sexual violence in the form of animated pictures, screams and talking is indeed high concern. South African beside Covid-19 pandemic, we are also struggling with another pandemic which is a Gender-Based-Violence. The care less portrayal of sexual harassment in film will definitely affect negatively the children of age 13.

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The film carries a content violence in many scenes. Physical and Psychological violence is seen and heard in the film within the context of WWII where Germans are seen to be killing the Jews. Trauma of Ella learning 23 members of her family were killed for their religion beliefs. A man was hanged in front of them (prisoners) to show what to expect if they are caught while trying to escape. Evidently it was a trauma to Ella, and indeed it will be traumatising to the kids watching the film aged 13.

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The Appeals Tribunal agrees with technical point raised by the Respondent in the form of the format which the film can be viewed. Online is easily accessible where the strong harmful classifiable elements which could be played repeated out of context. Indeed this affects the overall classification rating.

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Appeal Tribunal Decision

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The Appeals Tribunal upheld the decision of the Film and Publication Board (FPB) which classified the film and gave an age-rating and consumer advice of 16 P SV V respectively.

This decision was a consensus with a full complement of the Appeals Tribunal Honourable members.

Manko Buffel

Sohani Natasha Chundhur

Litheko Modisane

James Hlamalani Shikwambana

Phuthi Phukubje

Nomaswazi Shabangu-Ndwandwe

Shandukani Malaudzi

Sisanda Nkoala

Siyazi Tyatyam

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