

Appeal tribunal shreds classification of 'The Spear'

The Film and Publications Board cannot ban online images, an appeal tribunal told it this week.

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The Film and Publications Board has classified "The Spear" on the grounds that it contains nudity. But what other famous artworks have they missed?

It cannot impose age restrictions on publications and websites not involved in its classification process. It cannot use the protection of children as a reason when it wants to protect the dignity of a specific segment of society and may not assume that any nudity in art is automatically harmful to children.

The board erred in a number of respects when it classified the painting, "The Spear", depicting president Jacob Zuma with his genitals exposed, as restricted for children under 16, tribunal chairperson Karthy Govender wrote in a decision that struck down all

classifications on Brett Murray's painting.

"It is apparent from the reasoning of the classification committee that it was heavily influenced by the need to affirm the dignity of African males and protect sensitive persons and children." But even though that could perhaps be excused, "given the intensity of the furore", it went beyond the law, the tribunal said.

It also rejected the board's attempts to justify the classification after the fact on the basis that it could harm "children raised with cultural norms and values that find the public display of an African elder's genitals deeply offensive".

Especially with art, the tribunal found, plain nudity is not enough and harm to children has to be more than likely, not just a possibility.

The ruling on "The Spear" comes less than two weeks after the Constitutional Court found unconstitutional a provision that would have required magazines with any sexual content to submit to pre-publication classification.

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