

IN THE DISCIPLINARY COMMITTEE OF THE MEDIA COUNCIL AT KAMPALA

COMPLAINT NO.M003 OF 2005

KARITAS KARISIMBI ----- COMPLAINANT

VERSUS

THE RED PEPPER PUBLICATIONS ----- RESPONDENTS

RULING

This is a ruling on a preliminary objection raised by counsel for the Respondents, Mr. Maxim Mutabingwa seeking to have the complaint dismissed with costs to the Respondent.

Mr. Mutabingwa's based his objection on the following three grounds:

- (a) That this committee's jurisdiction extends to only journalists who have breached the professional code of ethics as in schedule 1 (hereinafter referred to as the "Code") of the Press and Journalists Act [Cap.105] (hereinafter referred as the "Act) and not to publishers and in particular the Respondent.
- (b) That the same matter between the parties is already before the High Court and should not be entertained by this Committee otherwise the Respondent shall suffer double jeopardy.
- (c) That the injunction procured by the Complainant in the High Court bars the Respondent from publishing defamatory stories of the Complainant and the stories complained of are true and not defamatory. The complaint is therefore misconceived and lacks merit.

In reply Mr. Owor, Counsel for the Complainant, stated that a close look at the complaint reveals that the Complainant seeks this committee to take disciplinary action against the editor and other journalists of the Respondent.

That the matter before this committee though related to the one in the High Court is fundamentally different in that this matter is about violation of the Code of Ethics and the disciplining of Journalists whereas the other is simply defamation. Mr. Owor further stated that the Complainant is not before this committee to enforce the injunction given by the High Court but to stop a witch hunt against the Complainant and the intrusion into her privacy.

We shall address the objection on the grounds as raised respectively:

- (a) with due respect to Counsel for the Respondent we do not agree that this Committee's jurisdiction extends only to Journalists who have breached the Code and the Committee has in previous cases ruled on this matter. Section 9(1)(c) of the Act provides for the Media Council's jurisdiction to discipline editors and publishers, to which group Respondents belongs. This particular group are not necessarily subject only to the professional code of ethics contained in the 1st schedule to the Act but the Media Council may apply section 9(1)(f) which empowers it to exercise any function as authorized by any law.

Section 40(2) of the Act provides that.... "A person who contravenes any provision of professional code of ethics commits professional misconduct and shall be dealt with by the disciplinary committee..."

As distinguished from Section 40(1) the Act refers to

"A journalist enrolled under this Act....."(Emphasis ours)

Section 2(uu) of the Interpretation Act [Cap1] defines a person as to include, any company or association or body persons corporate or unincorporated, a definition that encompasses the Respondent.

It is therefore without doubt that this Committee has jurisdiction over the Respondent.

The above notwithstanding, Mr. Owor correctly pointed out that the Complainant seeks for disciplinary action against the editor and other journalists (see last paragraph of complaint).

By virtue of that fact therefore the said parties should be joined and shown as parties in the title of the proceedings to remove any doubts.

- (b) In light of the above, this ground of the objection fails.

With due respect to Counsel for the Respondent we disagree that the matter before the High Court precludes this Committee from hearing this particular matter before it and that it opens the Respondent to double jeopardy.

The matter before this committee is intended to subject the Respondents to disciplinary action, whereas in the matter in the High Court the Complainant who is the Plaintiff therein seeks for damages for defamation. The two claims though they may be based on the similar facts are fundamentally different and their consequences likewise are different.

This distinction is similar to the one between criminal and civil matters. A civil dispute with criminal origins does not preclude either matter from proceeding. It is possible though that the conclusions in a criminal proceeding may be used as evidence in the civil matter, with appropriate weight given, but it does not perforce

confirm liability in the civil matter, which in this case seems to be the worry of the Respondents.

This ground of the objection also fails.

(c)

On the third ground of the objection we agree with Counsel for the Respondent when he says the injunction obtained by the Complainant in the High Court is against the publication of defamatory stories against the Complainant.

However the Complainant in her complaint has alleged that the stories complained of are 'false' in contradiction to the Respondent's claim that the stories are true. It is in these contradicting claims that the interest of this committee lies i.e., to establish whether or not the Respondents have breached Rule 1 of the Code or any other rule for that matter.

This Committee is to determine the veracity of the stories which perforce requires evidence to be produced by the parties. In this respect we refer to the case of Robert Lusweswe vs. G.W.kasule and Another [1987] HCB 62, where it was held that where an objection raises issues of evidence which require proof, then it is overruled. The Committee will not determine whether or not the stories are defamatory.

This ground of the objection also fails

In the premise we overrule the preliminary objection raised by the Respondents and dismiss the application to dismiss the Claim. Costs will be in the cause.

Dated at Kampala this27thday of ...**October**.....2005.

Signed:

[.....]
FR. J.M. WALIGGO
CHAIRMAN

[.....]
PAUL MUKASA
SECRETARY

[.....]
GORETTI NASSANGA
MEMBER

[.....]
PAUL EKOCHU
MEMBER