

THE REPUBLIC OF UGANDA

IN THE DISCIPLINARY COMMITTEE OF THE MEDIA COUNCIL AT KAMPALA

COMPLAINT NO.6 OF 2004

PASTOR MARTIN SEMPA ===== COMPLAINANT

VERSUS

RED PEPPER PUBLICATIONS LTD ===== RESPONDENT

DECISION OF THE COMMITTEE

The Complainant brought a complaint against the Red Pepper Publications Limited, which complaint may be summarized as follows:

- (a) the Red Pepper Publications Limited on the 23rd March 2004 falsely and maliciously placed and published the Complainants mobile-phone number 077 641 028 in the classified section of its Newspaper at page 13 with message... *"a gorgeous Makerere University baby is looking for any romantic, financially stable and ready for a long term relationship. For details call 077 641 028..."*
- (b) the Red Pepper Publications Limited has written many lies about the Complainant in a manner that is a breach of the Journalists Professional Code of Conduct;
- (c) the Red Pepper Publications Limited is engaged in "chronic" publication of pornography;
- (d) the Red Pepper Publications Limited in its publication ii volume number 63 published an inflammatory story headed "details of what robbed us of Wapakhabulo", that insensitive, culturally unacceptable and very, disrespectful of the dead and members of the public and therefore amounted to journalistic misconduct.

For brevity we shall refer to the Press and Journalist Act [Cap105] as the "Act" and the journalists Professional Code of Conduct as the "Code".

The Complainant represented himself and at the commencement of the hearing Mr. Mutabingwa represented the Respondents.

The Respondents did not file a defense but they appeared before the committee in the initial stages of the matter but thereafter refused and/or neglected to appear before this committee in spite of several notices given to them to appear and defend themselves. The

matter therefore preceded *ex parte*. At the hearing the Complainant adduced 23 pages of several publications of the Red Pepper newspaper that is published by the Respondent. One of which (*exhibit 23*) showed the advert placed in the classified section and showing a telephone number 077 641 028 that the Complainant said is his number. The rest of the publications exhibited were of pictures and caricatures depicting what the Complainant labeled variously as “obscenity”, “nudity”, “profanity”, “seduction”, “indecent”, “sodomasochism”, “bestiality”, “pedophilia”, “homosexuality /homosodom” and “sexual arousal”.

The Complainant argued that by publishing his mobile phone number thus, the Respondent maliciously attacked his person, improperly infringed on his privacy, damaged his reputation as a religious leader and brought ridicule to his person and that by the said publication the Respondent’s journalists breached Rules 1, 8 & 9 of the Code.

The Complainant further argued that Red Pepper Publications Limited chronically publishes pornographic and obscene material that tended to offend and corrupt public morals; that the said publications contravened section 166 (1) of the Penal Code and are also contrary to public morality.

For reasons best known to him, the Complainant abandoned the 4th complaint in respect of the late Hon. J. Wapakhabulo and only presented his complaint as above mentioned.

In light of the above and in the considered opinion of this Committee, the issues to be resolved are as follows:

1. whether or not the publication of the mobile phone number 077 641 028 in the classified section of the Respondents paper was an infringement of the Complainants privacy and a breach of the Journalist s Professional Code of Conduct;
 2. whether the Respondent published pornographic and obscene material which tends to offend and corrupt public morals and or is contrary to public morality;
 3. Whether the Complainant is entitled to the relief sought.
1. *Whether or not the publication to the Mobile Phone Number 077 641 028 in the classified section of the Respondents paper was an infringement of the Complainants privacy and a breach of the Journalist s Professional Code of Conduct;*

The Complainant showed the Committee letterheads of Makerere Community Church where he is a senior Pastor that were similar to the one in which the complaint is contained, all of which at the top left corner of the page have the said number written under the Complainants name, the Chairman of the committee as further proof called the said number from his phone, during the hearing, and it rang there and then. This Committee therefore has no doubt that the said mobile phone number belongs to the Complainant. The Complainant informed the Committee he never requested, in any way,

the appropriate order shall be given against the Respondent under section 9 © and section 33 of the Act, later in this decision.

2. *Whether the Respondent published pornographic and obscene material, which tends to offend and corrupt public morals and or is contrary to public morality.*

To put the issue into perspective the relevant provisions of the law are as below:

Section 3 (a) of the Act provides as follows:

“Nothing contained in section 2 absolves any person from compliance with any law –

- (a) *prohibiting the publication of pornographic matters and obscene publications insofar as they tend to offend or corrupt public morals;*
- (b) *.....”*

Section 6(a) of the Act provides as follows:

“A proprietor and editor of a mass media organization shall--

- (a) *ensure that what is published is not contrary to public morality;*
- (b) *.....*
- (c) *.....”*

That fact that the Red Pepper newspaper is widely circulated to the public is not in dispute.

Pornography as rightly argued by the complainant is not defined in the law books of Uganda. However the rules of legal interpretation state that where law does not define a word expressly then its ordinary and usual meaning can and should be sought and used. The committee chooses the definition found in Longmans dictionary of contemporary English new edition, 1987, which defines the word as;

“the treatment of sexual objects in picture or writing in a way that is meant to cause sexual excitement; books, photographs, films, etc. containing this.

Obscene in the same dictionary is defined as:

“(especially of ideas, books etc., usually about sex) offensive to accepted ideas of morality; indecent.....”

The committee agrees with the complainant that the pictures and writing contained in the various publications, adduced as evidence by the Complainant; fit the above description of pornography and are indeed obscene, but the question to be answered is whether the

said pictures and Respondent to publish his number as it did nor whether he gave any person his number to use for the said purpose.

The Complainant further adduced evidence of various SMS messages in support of his claim that he has been harassed by ‘pornographic addicts’ who relentlessly send him perverted messages much to his chagrin and discomfort, one message reads as follows;

I found you tel. in redpe of 30/3 I am ready only to do nothing but lick & kiss ur thighs & dip inside your ‘’’’with mouth.....

From the above it is clear that the privacy of the Complainant has been infringed by deliberate act of the Respondent and it is rather obvious that the message in the advert contains false information (the Complainant is not a girl in the first place), which should have been verified before publishing the same.

Rules 1, 8&9 of the Code provide as follows:

- 1. No Journalist shall disseminate information or an allegation without establishing its correctness or truth.*

.....//

- 8. A Journalist shall take the necessary steps to correct any damaging report he or she has made on any individual or organization.*
- 9. A Journalist shall not originate or encourage the dissemination of information designed to promote or which may have the effect of promoting tribalism, racism or any other form of discrimination.*

As it were, there is no evidence on record to show that there was the slightest attempt to establish the correctness or truth of the information concerning the Complainants mobile phone number as required by rules of the Code nor is there evidence that the Respondent try to correct the publication to stem the damage done as required by Rule 8 of the Code. Indeed the Complainant informed the Committee that he received no inquiry from the Respondent or has there been any attempt to correct orthe damage done by the said publication.

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...”

Section 2(uu) of the Interpretation Act [Cap 1] defines a person as to include, any company or association or body persons corporate or unincorporated, a definition that encompasses the Respondent.

The Committee finds that the Respondent as publisher of the Red Pepper newspaper infringed upon the privacy of the Complainant by publishing his mobile phone number

and in so doing contravened rules 1 & 8 of the Code, however the Committee finds no breach of rule 9 of the code. In that respect writing offend, corrupt and/or are contrary to Public morality. At the hearing the Complainant requested the Committee to find that the Respondent is in breach of Section 166(1) of the Penal Code Act and sanction the Respondent for that breach, with due respect to the Complainant, the issue of pornography as a criminal matter under the Penal Code Act cannot be addressed by this Committee.

The Complainant did not adduce evidence to show us that the publication was offending “public morality” or contrary to public morality. We do appreciate that as a practicing Christian this probably would offend the Complainant but it was incumbent upon him to bring sufficient evidence to show that the public as whole was affected by these publications in the manner that he was affected.

Be that as it may, we must have at the forefront of our minds our societal values and standards of morality. Morality is a very important issue that is at the very core of civilized society, in the case of Commonwealth vs. Sharpless; 2 Serg & R.91 (Supreme Court of Pennsylvania, USA, per Justice Yeates) it was, *inter alia*, stated that;

*“...the destruction of morality renders the power of the government invalid...the corruption of the public mind, in general and **debauching the manners of the youth**, in particular by lewd and obscene pictures exhibited to view, must necessarily be attended with the most injurious consequences ...no man is permitted to corrupt the morals of the people...”*(emphasis ours).

What therefore is the moral standard of our nation? Do the publications complained about meet and/or conform to the standard? Do the publications complained about provide any value to our standard of morality?

Morality refers to the quality of an action which renders it good (ref: Webster’s 1913 Dictionary); the conformity of an act to the accepted standard of right.

It is without doubt that our society upholds high moral standards, values and behavior. This is evidenced by objectives **XXIV** of the national objectives and directive principles of State policy found in the Constitution, which stipulate that all organs and agencies of the State, all citizens, organizations and other bodies and persons in applying or interpreting the law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society be guided by, *inter alia*;

“...Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy.....”

“the State shall:

- (a) *promote and preserve those **cultural values and practices which enhance the dignity and well being of Ugandans**; ...”(emphasis ours)*

The moral standards of our nation are inferred in our Constitution as here above mentioned and the core of our morals espoused human dignity and cultural practices. It is also a truism to say that our customary values form the bulk of our morals.

The publications exhibited variously show naked women and men, exposed private parts and suggestive pictures of scantily dressed women with accompanying written illustrations like, “*be mine boys!*” “*rampaging sex ace hyena tells tales of bonking*” ... “*he dicks me from his bike*” ...etc. the publications also show and portray sexual acts and allusions of sexual acts with beasts. In our considered opinion the said pictures and the accompanying writings singularly and together as a whole undermine our public morals and by publishing the exhibited publications the Respondent has offended, corrupted and committed an act contrary to the morals of the public.

The written captions and stories, in the publications, accompanying the pictures cannot be justified as being of serious literary, artistic, political and or any scientific value for the public nor do the said publications morally rehabilitate reform, valuably inform or contribute to the holistic development of a reader.

It is of special concern to this committee that daily copies of the Red Pepper Newspaper are available on the streets and other public places where even children can obtain and read them without any restriction whatsoever. Article 17 of the Convention on the Rights of the Child (1990), which Uganda has ratified, stipulates, inter alia, that the function of the media towards children shall be aimed at the promotion of the children’s social, spiritual and moral well being and physical and mental health.

It is the Committee’s view that no reasonable and conscientious parent would approve of his or her child being exposed to such explicit, obscene and lewd pictures or literature. More importantly it is incumbent upon the State to ensure that the media disseminates such material or information that is of social and cultural benefit to the children and encourages positive moral development. It is therefore of primary concern that the Respondent stops marketing and/or selling its newspaper, if it contains such material, in places easily availed by children and that if the respondent is to continue publishing material akin to the exhibited publications then the Red Pepper Newspaper should at the most be an “adults only” newspaper marketed in areas obtainable to adults only.

In conclusion this Committee finds that the material published by the Respondent contained pornographic and obscene material, which tends to offend, corrupt and is contrary to public morals.

3. *Whether the Complainant is entitled to the reliefs sought.*

The Complainant sought the following reliefs against the Respondent:

- (a) a public apology;
- (b) suspension of six months of the respondents journalism practicing certificate;
- (c) immediate closure of the Respondent and a revocation of its registration certificate;
- (d) compensation and damages for mental anguish and injury;
- (e) An injunction restraining the respondent from further publication of any picture for article of or about Complainant.

It is important to note that the complaint is against the Red Pepper Publications Limited and as such we shall address the issue in so far as they concern a Publisher, albeit we shall where necessary invoke such powers which are bestowed upon the Media Council to address issue which may concern editors and journalists in particular.

Section 9(1)© of the Act gives this Committee powers to exercise disciplinary control over journalists, editors and publishers. (emphasis ours).

Having found that the Respondent infringed upon the privacy of the Complainant and also contravened rule 1& 8 of the Code and that the material published by the Respondent contained material, which tends to offend and is contrary to public morals, the Committee finds that the Complainant is entitled to reliefs “a” &”d” in accordance with the Act.

The reliefs sought by the Complainant as contained in (b), (c) & (e) above are not tenable before this Committee.

The Respondent is not a Journalist and therefore has no practicing certificate to be revoked or suspended. Relief (b) cannot therefore be granted.

Section 2(2) of the Act provides that;

“no person or authority shall, on the grounds of the content of a publication take any action not authorized under this Act or nay other law to prevent the –

- (a) *printing;*
- (b) *publication; or*
- (c) *circulation among the public,*

of a newspaper.

The Complainant argued that Section 9(2) of the Act gives this Committee powers to censor or stop the publication of the Respondents newspaper.

The said section 9(2) provides as follows:

“In carrying out its functions under subsection 1(e) the council may refuse a film, videotape or apparatus to be seen shown, exhibited or acted for public consumption,

In our view, interpretation of this section requires the *ejusdem generis rule*, which stipulates that where particular words are followed by general words, the general words are limited to the same kind as the particular words. Thus the word apparatuses word be limited to such material or things related to videotapes, plays films etc. the section is therefore not applicables.

This Committee derives its powers from the Act and the Act does not at any point authorize action that would stop the publication of the newspaper because of its content. Section 3 of the Act (supra) refers to other laws other than the Act and this Committee, as already mentioned, cannot take action from a mandate not conferred upon it. Reliefs (c) & (e) cannot therefore be granted.

However, the committee in accordance with Section 6(a) and 9(1)(c) of the Act would caution the Respondent and order that it stops publishing material the content of which is pornographic (as per definition given)and obscene. And the committee in consequence thereof orders that the editors of the Red Pepper newspaper ensure that no such material is published and availed to the public, failure of which they shall be held responsible.

In accordance with Section 33 of the Act the Committee further orders as follows:

- i) The Respondent shall in two separate publications publish in its Newspaper, the Red pepper, a prominent unequivocal apology to the Complainant for having published his mobile phone number and infringed upon his privacy;
- ii) The Respondent shall pay to the Complainant Ushs. 5,000,000/= as damages for the inconvenience and injury caused to the Complainant;
- iii) Bearing in the mind the time taken and that the Complainant was not represented by Counsel the Committee order that the Respondent shall pay costs of 300,000/= to the Complainant.

Dated theof.....2005

Signed:

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

[.....]
C. BYABAGAMBI
SECRETARY

[.....]
KATABALIRWE AMOOTI
MEMBER

[.....]
PAUL EKOCHU
MEMBER

[.....]
ROBERT RUTAAGI
NASSANGA
MEMBER

[.....]
GORETTI
MEMBER

[.....]
AGA SEKALALA Jr.
MEMBER

[.....]
JAMES WALUGEMBE
MEMBER

THE REPUBLIC OR UGANDA
THE DISCIPLINARY COMMITTEE OF THE MEDIA COUNCIL AT
KAMPALA
COMPLAINT NO.6 OF 2004

Pastor Martin Ssempe

COMPLAINANT

Vs

Red Pepper Publications Limited

RESPONDENT

Ruling on Respondents Preliminary Objection:

On 1st April 2004 Pastor Martin Ssempe filed a complaint against the Red Pepper Newspaper. The complaint may be summarized as follows;

- (i) The Red Pepper Publication of 23rd March 2004, at page 13 falsely and maliciously placed the Complainants Tel. Mo. 077 641 028 in their classified section with the message “*a gorgeous Makerere baby is looking for a romantic, financially stable and ready for a long term relationship for details call 077 641 028*”.
- (ii) The Red Pepper Publication had written many lies about Complaint in a manner that tantamount to professional misconduct.
- (iii) The Red Pepper Publication engages in chronic publication pornography.

- (iv) The Red Pepper Publication ii Vol. 3 No. 63 contained an inflammatory story on details of “what robbed us of Wapakhabulo”. The Complainant states that the said story was insensitive, culturally unacceptable very disrespectful of the dead and members of public and therefore amounted to Journalistic misconduct.

The Respondent was served with this complaint through their advocate Mr. Mutabingwa Esq., on 16th July 2004. However the Respondent had not filed a defense by the time the hearing of the complaint commenced.

At the hearing, Counsel for the Respondent Mr, Mutabingwa, raised a preliminary objection. He argued that this complainant lies outside the jurisdiction of the Media Council insofar as it accused the Red Pepper of chronic publication of pornography contrary to S.166 of the Penal Code Act. Respondents Counsel stated that the functions of the Media Council are enumerated in the Press and Journalists Statute and its jurisdiction is limited to handling disciplinary cases arising out of the breach of the Professional Code of Conduct outlined in the Fourth Schedule to the Press and Journalist Statute.

Respondents Counsel argued that anything that falls outside the Professional Code of Conduct is beyond the jurisdiction of the Media Council and should be handled by regular courts of law.

In reply to the objection above, the Complainant argued that the Media Council was clothed with sufficient powers and jurisdiction to hear and determine the complaint. He argued that;

- (i) the functions of an editor are clearly spelt out in Section 3 (a) of the Press and

Journalist Statute and that an editor's job is to ensure that what is published is not contrary to public morality.

- (ii) the Media Council had a duty to exercise disciplinary control over journalists, editors and publishers under S.9(e) of Press and Journalist Statute.
- (iii) The Media Council has a duty to censor material for public consumption, in addition, that S.9 (2) the Media Council has a duty to promote good ethical standards and discipline of Journalists. Further, he argued that under S.9 (2) the Media Council may refuse an apparatus film, video tape or apparatus to be shown for public consumption. He submitted that the Red Pepper Publication is an apparatus for public consumption.

The issue to be determined by the Media Council is whether it has jurisdiction to hear and determine the complaint that the Respondent published pornography and is guilty of professional misconduct. In determining this issue it is important to examine the provisions of the Press and Journalist statute that are relevant to the functions and powers of the Media Council.

The long title to the Press and Journalist Statute states that it is "An Act to ensure the freedom of the press, to provide for a Council responsible for the regulation of mass media and to establish an institute of journalists of Uganda. S.2 of thereof provides for a right to publish a newspaper however S.3 provides that no person is absolved from

compliance with any law (a) prohibiting the publication of pornographic matters and obscene publications insofar as they tend to offend or corrupt public morals; (b) prohibiting any publication which infringes on privacy of an individual or which contains false information.

S.6 of the Act provides for the functions of a proprietor and editor of a mass media organization and states that they shall-ensure that what is published is not contrary to public morality.

The functions of the Media Council are outlined in S.9 of the Act that provides that the Council shall-

- (a) regulate the conduct and promote good ethical standards and discipline of journalists;
- (b) to arbitrate disputes between – public and media; and the state and the media;
- (c) exercise disciplinary control over journalist, editors and publishers;
- (d) promote, generally, the flow of information;
- (e) censor films, video tapes, plays and other related apparatuses for public consumption; and
- (f) exercise any function that may be authorized or required by any law.

The Fourth Schedule to the Press and Journalist Statute contains the Professional Code of Ethics which, *inter alia*, prohibits Journalists from disseminating information or an allegation without established its correctness or truth.

In light of the above provisions of the law, this Committee agrees with the Complainant

and finds that it has sufficient jurisdiction to hear and determine the complaint before it. This is principally because it has a duty under the law to regulate the conduct and promote good ethical standards and discipline of journalists-who are required by the law, *to ensure that what is published is not contrary to public morality*. In performing its legal duty above, the Media Council is not limited to the Professional Code of Ethics under the Fourth Schedule. The test as to what amounts to “public morality” or “good ethical standards” for journalism in our view, is not to be premised solely on the said code but includes what the Media Council finds considering all the circumstances of a particular case. We hold the considered view that sections 3, 6, 40 of the Press and Journalist Statute and the Professional Code of Ethics under its Fourth Schedule must be read together and not in isolation of each other. To restrict the Media Council to the Professional Code of Ethics would be to unduly limit its mandate in regulating journalists – especially on issues of public morality that are mention under S.6 of the Press and Journalist Statute but are not included in the said Code. It can not have been the intention of the legislature to tie the hands of the Media Council in this way.

It is important to point out that in the instant case, the Media Council does not have to resort to the Penal Code to determine whether or not the Respondent has published pornography or to find whether or not the Respondent has committed an offence contrary to S.166 of the Penal Code Act, rather, it seeks to establish whether or not the Respondent, in its publications, meets good ethical standards public morality based on the complaint. This will ultimately be determined on the basis of the evidence to be adduced at the hearing. The Committee is aware that Uganda’s law does not specifically define

pornography. In the absence of such a definition, the Committee is at liberty to consider the facts at hand; the relevant laws in other common law jurisdictions as well as international practice.

The Committee finds the Respondent's objections are without merit and simply aim to thwart the hearing of the complaint without delving in its full merits. Accordingly, the Respondent's objection is overruled.

Dated this 17th day of August 2004 at Kampala

Rev.Fr.J.M.Waliggo (Chairman)

Mrs. Constance Byabagambi (Secretary)

Mr. R. Rutaagi (Member)

Nassanga Goretti (Member)

Mr. James Walugembe (Member)

Mr. A.N.Makubuya (Member)