

**IN THE DISCIPLINARY COMMITTEE OF THE MEDIA COUNCIL AT
KAMPALA**

COMPLAINT NO....OF 2004

SHIFFA NABBANJA

=====

COMPLAINANT

VERSUS

1. EDITOR BUKEDDE NEWSPAPER

2. THE NEW VISION PRINTING

& PUBLISHINGS CO. LTD

=====

RESPONDENTS

DECISION OF THE COMMITTEE

The facts of the complaints are as follows:

The Complainant Shiffa Nabbanja is a 24 year old Muslim lady, born of Muslim parents, who has recently completed a diploma course in secretarial and information management at Makerere University Business School Nakawa.

In two publications of the Bukedde newspaper of 17th March 2004 and 10th June 2004 (*marked as exhibits C1 (a) & C2 (a) respectively*), the Respondents published photographs of the Complainant in the “*Sanyu*” page, with captions which, *inter alia*, refer to the Complainant as Maureen Nakanja and Noreen Nassali respectively and also give other ‘facts’ that are attributed to the Complainant.

In summary the Complainant stated that she never gave any authority whatsoever to the Respondents to publish her photograph or is she known anywhere by the names attributed to the photographs. She also stated that she is a pious Muslim whose privacy has been infringed by acts of the Respondents and whose person has suffered injury by the malicious and dales publication of her photographs in the said newspapers under the given captions.

The Complainant further stated that the injury to her person was further compounded because her parents thought she had converted to Christianity and had been angered and hurt by the misrepresentations of the Respondents contained in the captions aforesaid.

The Complainant has sought redress from this Committee in accordance with the Press and Journalist Act [Cap 105].

The Respondents deny liability and in their defense they produced one witness Mr. Semugenyi Nyanzi Deus, the editor of the leisure page of the Bukedde Newspaper testified that the ‘*Sanyu*’ page of the Bukedde newspaper is meant to source and generate entertaining news. That the said page is one of the ways for mobilizing women for development and for fighting bad behavior and morals in society.

Mr Nyanzi (*hereinafter referred to as "R1"*) testified that the photographs they receive for the Sanyu page have to be authorized for use by the owner and must have an accompanying message and signature of the owner for consent to use the same, that these measures are part of the policy guidelines of the newspaper.

He further testified that the photographs in question were brought by a one Nambi Rashida, a freelance journalist for the Bukedde Newspaper who showed him the signatures at the back of the respective photographs and also told him that the Complainant had given consent to use the photographs. Nambi then typed a message in the Bukedde offices to accompany the photographs. R1 stated that in his view the above events presupposed consent by the Complainant. He however said the newspaper no longer had the copies of the photographs because the journalist who brought them took them back.

Finally R1 testified before this Committee that there is a policy for payment of photographs brought in by freelancers for use by the newspaper and further that the newspaper is widely circulated in Uganda.

The following issues were framed for determination:

1. Whether there was a breach of the Press and Journalist Act [Cap 105] and Journalist Professional Code of Ethics by the Respondents when they published the two photographs.
2. Whether the Complainant is entitled to the reliefs she has sought.

The Committee listened carefully to the submissions of Mr. Mohammed Nyanzi Counsel for the Complainant and Mr. Robert Kabushenga Counsel for the Respondents and now rules as follows:

1. *Whether there was a breach of the Press and Journalist Act [Cap105] and Journalists Professional Code of Ethics by the Respondents when they published the two photographs.*

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 relevant provisions of the law provide as follows:

Rule 1 of the Code provides that ..."*No Journalist shall disseminate information or an allegation without establishing its correctness or truth.*

Rule 8 provides that ..."*A Journalist shall take the necessary steps to correct any damaging report he or she has made on any individual or organization.* 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.

It is an agreed fact that the photographs appearing in the said publications are of the Complainant. The captions against the photographs written in Luganda and published in the Respondents publication of 17th March 2004 read as follows:

Amannya: Noreen Nakanja.
Gy’abeera: Kansanga
By’anyumirwa: Kuwuliriza nnyimba.
Obubaka: Akubiriza abawala okusoma n’okukola ennyo basobole okweyimirizaawo mu maaso.

The caption in the publication of June 10th 2004 reads as follows:

“Akazigo kankoledde emikwano egitalojekka”

Erinnya: Noreen Nassali
Gy’abeera: Ntinda
Emyaka: 23 gyokka
Ebimunyumira: kuwukiriza miziki
Ebimuwomera: ettooke n’ennyama tebinkola bubi
Ttumu gy’awagira: Arsenal eyatwala ekikopo kya bungereza
Obubaka: Abakyala mulinal ekukola ennyo lwe mujja okusobola oluvuganya mu nsi eno.
Kyebamwagalako: Akazigo k’omu.... Kamu.... Emikwano mingi buli gyayita.

The Complainant showed the committee her passport No B0377065 that confirmed her names as Shiffah Nabbanja. That being the case, the captioned data attributed to her is in its entirety not true.

At the hearing this issue was not contentious in so far as the accuracy and/or falseness of the information contained in the captions was concerned, there is therefore no need *“to flog a dead horse” in that regard.*

However with regard to the Respondents duty to establish the correctness or truth of the information, R1 testified that he only looked at the signatures at the back of the photographs and relied on the word of Rashida Nambi, who incidentally was not called to testify, to verify consent to the use of the photographs in the said publications, he further stated that he is not an expert on signatures and would not know whether this was the Complainant’s signature.

It is also R1's testimony that the messages captioned against the photographs were written and typed out by Rashida Nambi not the person he saw in the photographs, a fact that clearly undermines his testimony that such photographs are as a matter of practice only accepted and used when they have an accompanying written message from the owner.

With due respect to the witness the events he narrated, as above, cannot amount to establishing the correctness or truth of the information, even in light of the guidelines of the newspaper he works for which require him to crosscheck information they receive from such freelance journalists.

The Complainant unequivocally told this Committee that she was never contacted by any officer or journalist working for Respondent in order for them to establish the truth of the contents of Nambi's message and seek her consent to publish the photographs in fact neither the Respondents nor Nambi even knew the Complainant at all, such that they gave her two different names on two different occasions!

To compound the matter the Respondents did not at any time before this complaint was brought to this committee attempt to take the necessary steps required by rule 8 of the code.

The Committee therefore finds that the Respondents breached Rule 1 and 8 of the Code when they published the two photographs without establishing its correctness or truth and by failing to correct the facts thereof.

2. *Whether the Complainant is entitled to the relief she has sought.*

The Complainant sought for disciplinary action against the Respondents and in particular prayed for the following remedies:

- (a) a public apology for a number of times the publication have been made with the same boldness of lettering and pages where the publications appeared;
- (b) compensation from the newspaper companies for loss and injury suffered resultant from infringement of the Complainants privacy;
- (c) compensation from the newspaper company for the loss and injury resultant from the false and malicious publication;
- (d) a permanent injunction restraining the continued publication of the Complainants portrait and false information therein;
- (e) an account of profits and/or sales of the days the Complainant's portraits were published;
- (f) delivery and/or return of the portraits to the Complainant;
- (g) Reimbursement of legal costs and expenses.

Section 33 of the Act mandates this Committee to impose any or all of the following penalties when a ground for disciplinary action is proved:

- (a) *That a journalist be admonished or be required to apologize to the aggrieved party in the manner specified by the Committee, including the same boldness of lettering on the page where the article appeared in the newspaper;*
- (b) *That the practicing certificate of the journalist be suspended for a specified period not exceeding six months;*
- (c) *That the media organization which published the matter that led to the complaint pays compensation to a person who suffered loss or injury as a result of the misconduct*

It is apparent that the remedies sought by the Complainant numbered (d), (e) & (f) above are not within the mandate of this Committee for the following reasons:

- i) In light of the provisions of Section 2, 9 and 33 and of the Act this Committee is not furnished with the powers to injunct the Respondents;
- ii) similarly this Committee is not mandated by any law to order the Respondents to disclose their financial statements, in any case this is a disciplinary action which should not dwell on assessing the Respondents profits for whatever reason but focus on the conduct of the Respondents;
- iii) on the issue of returning the Complainants portraits, the Committee finds it spurious and futile to order for the return of the same in light of the evidence given by R1 that the pictures of the Complainant are not in their custody.

Pursuant to rule 8 of the Code, the respondents are obliged to take necessary steps to correct any damaging report made on any individual or organization, in this case the misrepresentation/falsification of facts as above discussed. Indeed in his submissions Counsel for the Respondents indicated that the Respondents had been willing at the beginning of the hearing of this complaint, to publish an apology to the Complainant.

The Committee therefore finds that the Complainant is entitled to an apology from the Respondents and orders that the Respondent make a prominent apology to the Complainant in at least two publications of its newspaper in the same boldness and manner.

The remaining question is whether the Complainant is entitled to compensation for loss or injury suffered as a result of; an infringement of the Complainant's privacy; and the false and malicious publication complained of.

At this stage it is important to make a distinction between a picture/photograph taken in and /or at a public event/place that is published for the purpose of illustrating the event as opposed to a picture/photograph taken of a person for the purpose of illustrating the person, which Counsel for the Complainant aptly termed as appropriating the 'persona' of a person. As a starting point therefore this Committee is of the *prima facie* evidence of an infringement of the privacy of the affected person. However such infringement may be qualified and found not to be so if certain circumstances exist, such as, consent of the person and other circumstances as discussed below.

It is fair to conclude that privacy is a basic human right and indeed everyone should be entitled to respect for his or her private and family life. However the extent of an individual's privacy depends on the circumstances and needs and should be balanced with certain other rights. Of particular relevance to this matter is; the right to freedom of expression; and the Publics' right to information. It is also a fact that the latter rights are not absolute.

Rule 1 of the code is a clear example where the right to freedom of expression is regulated i.e., requiring that the veracity of any piece of information must be established as true and correct before dissemination. The public right to know is actually a corollary to this rule i.e., they are entitled to receive true and correct facts.

The Correct is of the considered opinion that the Respondents acts amounted to an intrusion of the privacy of the Complainant. These acts of the Respondent have caused harm and damage to the Complainant. The Complainant stated that she did not consent to the publication of her pictures and publications were false and incorrect. She also stated that the said publication caused her a lot of pain and inconvenience, for example her parents and friends reacted negatively thinking she had converted to Christianity. This in our opinion constitutes injury to the Complaint as a result of infringement on her privacy.

Considering that the Complainant is fresh graduate from college and that the committee has ordered that the Respondent apologize to her, the Committee orders that the Respondents pay Ushs.1, 5000, 000/= to the Complainant for infringement of her privacy.

The Complainant pleaded that she is entitled to compensation for loss or injury suffered as a result of the false and malicious publication complained of.

With due respect to the Complainant, she failed to show this Committee what loss or injury she suffered as a result of the false and malicious (*sic*) publication.

That the publication contained falsehoods and incorrect information is already agreed but the Complainant's remedy to that is application of Rule8 of the code and the Committee has ordered that an apology to the Complainant be published.

The arguments that the publication was tantamount to "*ekimansulo*" and that it brought disrepute to her good name were, in our opinion, well answered by the arguments of Counsel for the Respondents and the evidence of R1.

Counsel for the Respondents argued that the Sanyu page of Bukedde Newspaper carries a positive message, which underscored by its very title "Sanyu" that means "joy". He further argued that the publication was done in good faith without malice aforethought.

Indeed we find it difficult to construe malice in a situation where the Respondents did not even know the Complainant. In addition to the above the evidence of R1 that the 'sanyu page' was introduced as a tool to mobilize women and to fight bad behavior in society is further evidence that malice would not be at the forefront of the publication.

From what this Committee has read in the captions and what features of the Complainant, the bust an above, are shown in the pictures it is difficult to conclude that malice was aforethought or that the page is a depiction of persons of low morals.

The Committee therefore finds that the Complainant is not entitled to compensation for loss or injury as a result of the false and malicious publication.

Be that as it may, it is the decision of this Committee that the Complainant be awarded exemplary damages. We should not forget that the Respondents have breached a statutory obligation for which disciplinary action is imposed.

In the case of Obong & Another –vs-Municipal Council of Kisumu[1971] E.A 91, the Court of Appeal, with reference to Rookes –vs.- Bernard & Others (1964) AC 1129, held that, “apart from **where it is authorized by Statute**, exemplary damages may only be awarded where there is oppressive, arbitrary or unconditional action by a servant of Government and secondly where the **Defendant’s conduct was calculated to procure him some benefit, not necessarily financial, at the expense of the Plaintiff.**(emphasis ours)

The instant matter is a disciplinary action and section 33(c) gives this Committee power to discipline the Respondents by imposing a compensation order, which presupposes and includes exemplary damages.

From the evidence on record it is a fact that sanyu page plays a role in the sales of Bukedde Newspaper and the hasty way in which the pictures were received and published shows that the editor was hard pressed to fulfill his obligation of completing and making the sanyu page ready for publication notwithstanding the veracity of the information he had received.

It is therefore evident that Respondents published the Complainant’s pictures with the consideration of procuring a financial benefit for the Newspapers and non-financial benefit for the editor.

Considering the gravity of the Complainant, the other orders given and for the above reasons the Committee shall award exemplary damages of 500,000/= to the Complainant.

In summary the Committee orders as follows:

1. The Respondents make a prominent apology to the Complainant in at least two publications of their newspaper in the same boldness and manner for having

published her photographs without her consent and for giving false facts about her.

2. The Respondent pay to the Complainant Compensation of UShs.1, 500,000/= for infringing on her privacy.
3. The Respondents pay the Complainant exemplary damages of Ushs.1, 000,000/=.
4. The Respondents pay costs of the Complaint of Ushs.500, 000/=.

Dated the3rd.....of.....May.....2005

Signed

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

[.....]
C. BYABAGAMBI
SECRETARY

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KATABALIRWE AMOOTI
MEMBER

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PAUL EKOCHU
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ROBERT RUTAAGI
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AGA SEKALALA Jr.
MEMBER