



JUDGMENT OF THE INDEPENDENT MEDIA OMBUD
PAMELA MASHIANE LTD VS THE STAR (GAUTENG REGION)

Complaint	
Independent Media Publication	The Star
Journalist/s	Lindile Sifile
Photographer	n/a
Complaint lodged by	Pam Mashiane
Date complaint lodged	16 September 2019 (date waiver was signed)
Type of complaint	Defamation, misleading inaccurate news
Ruling	
Date Ruling delivered	24 October 2019
Applicable version of the Independent Media Press Code	1.0
Clauses of the Independent Media Press Code considered by the Ombud Adjudication Panel	Clauses 2, 3 and 6.3.1
Related complaints considered	N/A
Sanction / Remedy	Right of reply to be afforded to the complainant
Complaint fee	N/a
Is this report notable?	Yes

Summary of notability	Alleged defamation, damages claim, means of obtaining evidence and an extreme time delay.
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1 Background and Complaint

- 1.1 On 16 September 2019 (date the waiver was signed), Pam Mashiane, the complainant, officially lodged a complaint regarding a story headlined “Abuse of power revealed at Film and Video Foundation” (<https://www.iol.co.za/the-star/news/forensic-report-reveals-how-managers-abuse-power-at-film-and-video-foundation-18219384>), which appeared on page 2 of the Star newspaper, as well as IOL, Independent Media’s online platform. It must be noted that IOL’s Editor, Riana Howa, should have also been part of these proceedings but was not contacted as the article originally appeared in The Star. Any sanction or remedy, if any, will include IOL as well.
- 1.2 The article, written by a journalist named Lindile Sifile, brought to light a series of claims made against Council Members of the National Film and Video Foundation (NFVF), of which the complainant is one of them, had “splashed” more than R5 million on unauthorised international trips. The article specifically mentions Pam Mashiane, the complainant, amongst others, specifying how she had flown first class from Dubai to Johannesburg costing the NFVF R8 230.00 (eight thousand two hundred and thirty Rands). It must be noted that in The Star newspaper the amount quoted was R8 230.00 (eight thousand two hundred and thirty Rands) but in IOL’s online version the amount was erroneously quoted as R82 300.00 (eighty-two thousand three hundred Rands). Which forms the basis of one of the complainant’s main contentions relating to publishing inaccurate news on the part of the publications.

1.3 The article names a few other Council Members of the NFVF and refers, as a source, a report compiled by *Comperio Forensic Services*, a report commissioned by the Minister of Arts and Culture, Nathi Mthethwa, in June 2018 last year. As per the testimony of the complainant, she has been struggling to apply for jobs, a feat of many unsuccessful attempts, and because of this, she was encouraged by a friend to go and google herself, which is how the complainant stumbled upon this article. Pam Mashiane immediately contacted the publication and the matter was escalated to the Office of the Group Ombud.

1.4 The complainant's contentions are as follows;

1.4.1 That the article contained was untrue and tarnished the complainant's reputation by publishing misleading and inaccurate news that contravened Clauses 2, 3, 6.3.1 of the Independent Media Press Code. These clauses deal with publishing inaccurate and misleading news, the right of reply and means of obtaining evidence, respectively;

1.4.2 That the alleged misleading and inaccurate article caused defamation, in so far as the complainant contends, that since the publishing of the article, she has been unable to get any job opportunities and this is because she relies on her name and reputation for goodwill, along with the 29 years of experience;

1.4.3 That she was not given an adequate right or reply;

1.4.4 That evidence obtained by the journalist was obtained through "clandestine methods", further contravening the Press Code.

1.4.5 Lastly, that information published insofar as the erroneous amount of R82 300.00 (eighty-two thousand three hundred Rands) on IOL's online platform as oppose to R8 230.00 (eight thousand two hundred and thirty Rands) as seen in The Star is inaccurate, distorted and misleading.

- 1.5 The Star defended the accuracy in its reporting, but it conceded to the error made online regarding the unauthorised expenditure of R82 300.00 (eighty-two thousand three hundred Rands) on IOL’s online platform as oppose to the accurate amount of R8 230.00 (eight thousand two hundred and thirty Rands) that was accurately quoted in The Star.
- 1.6 This is the first time the Office of The Group Ombud has to deal with a claim for damages. In order to prove that a claim for damages could succeed one has to look at the element of causation. This is to say that there must be a causal link between; the patrimonial loss suffered, that takes the form of loss of job opportunities, and that such a loss was solely and exclusively caused by the publication of the article. In order to ascertain the causal link, we have to conduct a detailed analysis of the documentary evidence submitted to the Office, which can be found in the table below. It must be noted that it is not common practice for the Ombud Office to list the documentary evidence provided, but it was found imperative in this case for the sake of trying to ascertain a causal link to prove damages as well as transparency, a founding principle of the Ombud Office.

Figure 1: Analysis of the Documentary Evidence Provided by Relevant Parties

ANALYSIS OF EVIDENCE SUBMITTED BY COMPLAINANT	ANALYSIS OF EVIDENCE SUBMITTED BY DEFENDING PARTIES
<p>1. Complainants submitted their complaint form supplemented by a 3-page document detailing which clauses of the Press Code were contravened and how (see 1.4. above). In this document the complainant explains how the flight change was due to an error made by the CEO’s PA who had originally booked an incorrect flight to depart at the wrong time.</p>	<p>Email thread between all the relevant parties where the Editor of The Star initially offered the complainant a right of reply which he subsequently withdrew upon being notified that the journalist, Lindile Sifile, is sticking to his story. This is common practice, where the Editor stands by the journalist and his/her sources. The REE, Yogas Nair, was also a part of this email communication, as a liaison between all the relevant stakeholders as per the Complaints Procedure.</p>

2. A 1-page document explaining the claim for damages which is supplemented by appointment and removal letters below.	A segment of the <i>Comperio Forensic Services</i> Report where the allegation made in the article against the complainant is found.
3. Complainant's appointment letter as Council Member for the NFVF dated 5 April 2017	Original article sent by the journalist before publication as well as the online version that reflects/quotes the incorrect expenditure amount.
4. Complainant's removal letter as Council Member for the NFVF dated 26 November 2019, sent to her shortly after the article was published on 22 November 2019	Lindile Sifile sent through the contact number of his source, who would like to remain anonymous, that corroborates information in the report commissioned by the Minister of Arts and Culture.
5. Appointment letter, appointing the complainant as acting CEO of the North West Parks Board, dated 11 April 2019	
6. Appointment letter, appointing the complainant as a Member and Deputy Chairperson of the Mmabana Arts, Culture and Sports Foundation Board with a signature by the complainant accepting the appointment, dated 5 April 2017.	
7. A letter retracting the appointment of the complainant as a Member and Deputy Chairperson of the Mmabana Arts, Culture and Sports Foundation Board stipulating that the letter was erroneously dispatched, and that the appointment is void, dated 24 April 2019	
8. Excel spreadsheet showing what board members were asked internally by the board to assist in correcting what was wrongly decoded by the <i>Comperio Forensic Services</i> Report. In the spreadsheet you can see what	

<p>the complainant's submissions were regarding the flight upgrade</p>	
<p>9. An email thread communication with Zama Nkosi, who was also an implicated Council Member, saying that the flight upgrade was complimentary.</p>	
<p>10. An email with the subject line "Pamela Mashiane updated travel vouchers" from the Flight Centre, the travel agency, showing that the complainant, despite being offered many options, one of them being considerable cheaper (for R1490 at 9pm on 30th March 2017), the more expensive option was chosen. And it is the inference of the Ombud Office that this is the root of the contravention of governance processes grievance by the <i>Comperio Forensic Services</i> Report. The CEO's PA, as contended, chose a flight leaving the next day, 31 March 2017 instead of the cheaper one for R1490 at 9pm on 30th March 2017. This resulted in an extension of the hotel stay for an extra day and flight transfers as well. Even though the upgrade to first class was complimentary it seems that the unauthorized expenditure cost the NFVF almost 8 times more than what it would have if the complainant had left on the 30th in the evening after the programme had ended at 6pm that night.</p>	
<p>11. A tax invoice from the Flight Centre, the travel agency, stipulating that the</p>	

cost of the change to the business class flight was incurred by the NFVF, at a cost of R8 230.00 (eight thousand two hundred and thirty Rands) which could have been averted had the complainant chosen the cheaper flight for R1490 at 9pm on 30 th March 2017.	
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2 Ruling

- 2.1 Before considering the merits of the matter it is worth noting that the Ombud of the Independent Media Group is empowered in terms of the Independent Media Press Code and so any reference to the Code of Ethics and Conduct for South African print and online media is not relevant to this complaint and was not considered.
- 2.2 The Star journalist Lindile Sifile rightfully contacted a source, who worked in relatively close proximity to the complainant, who chose to remain anonymous. Because it is also the first time the Ombud Office is confronted with a case where Clause 6 of the Press Code is said to be contravened (the “means to obtaining evidence” Clause), precedent will be set in this matter. In an attempt to ensure that the source was a trustworthy one, and one that is truthful it was the duty of the Ombud Office to contact the source directly and to confirm the journalists’ corroborations. Indeed it was found that the source was a trustworthy one, of higher ranking, that could confirm that the complainant was rightfully implicated in the NFVF unauthorized expenditure case. It must be noted that the decision to keep the source anonymous is that of the source. An agreement was made between the journalist and the source to keep the identity away from the public. The Ombud is aware of who the source is and has the contact details of the said source on record as well.

- 2.3 The incorrect expenditure amount reflected on the IOL online platform was incorrect and distorted, and although the correct expenditure amount was printed in The Star, the online version was erroneous, exaggerated and misleading. In this regard, the Ombud rules, insofar as the amount is concerned, that the amount must be corrected on the online platform.
- 2.4 Insofar as the right of reply of the complainant is concerned, the Ombud rules that the complainant was not given an adequate right of reply in this instance. Testimony by the journalist proves that the complainant was not contacted and not given a full opportunity to explain her side of the story and this is a violation of the complainant's rights. It is therefore our ruling, that the complainant be afforded a right of reply that will appear on the same page that the initial story appeared (page 2).
- 2.5 Regarding the issue of defamation that the complainant is claiming damages for, the Ombud is not satisfied that there is a causal link between the said patrimonial loss and the publication of the article. It cannot be said, beyond a reasonable doubt that the article caused the loss of job opportunities of the complainant. If the internal meeting held by directors afforded to all Council Members an opportunity to correct the "incorrect" information decoded in actual report then it is the Ombud's inference that the complainant would have still been employed as a Council Member and as a board member of the other institutions she provided removal letters for. It is obvious that there was a gross contravention of internal process of the NFVF and the complainant is paying the price for her actions. Reparations cannot be found within the Ombud and blame cannot be placed on The Star in this instance, the complainant's dismissal seemed to be inevitable, whether the article was published or not.

- 2.6 Given the nature of the allegations, the serious risk of personal and reputational damage to the complainants, fairness should have compelled The Star's editorial team to guard against making the general public believe that the complainant's unauthorized expenditure was more than what it was, and the only remedies provided will be a correction of the online article insofar as the amount is concerned, as well as a right of reply afforded to the complainant. The discretion to exercise the right of reply will lie solely with the complainant.
- 2.7 The Ombud is not satisfied that the evidence provided to the Adjudication Panel vindicates the complainant beyond a reasonable doubt. The issue of following processes in an organization is one of governance and must be held in high esteem. It would be going against the principles of the Ombud to make a ruling that encourages such behaviour, which must be met with disdain.

3 Sanction / Remedy

- 3.1 The Star is ordered to give the complainant an adequate right of reply which is to be published on the same page in which the original article appeared within 10 calendar days of the date of this report.
- 3.2 IOL online is ordered to publish the correct the amount published on the online version from R82 300.00 (eighty-two thousand three hundred Rands) to R8 230.00 (eight thousand two hundred and thirty Rands) as this error was inaccurate, misleading and a contravention of the Independent Media Press Code.

4 Note

- 4.1 Adjudication Panellists: Moleboheng Mosia (Ombud Chair), Yvonne Musonza (Panel Member) and Lizaan Nel (Panel Member)

- 4.2 An apology must be offered to all parties concerned from the Office of The Group Ombud regarding the extreme time delay. We offer our sincerest apologies for any inconvenience caused. The time delays were caused by having one of the Panel Members being incapacitated for almost 2 weeks and a judgment could only have been delivered once all Panellists were present, so as to perpetuate the Ombud's principles of fairness and ethical arbitration.
- 4.3 Either party has the right to appeal this decision with the Appeals Panel, and a party wishing to appeal has 7 business days to do so.