



**ETHICS, COMPLAINTS AND DISCIPLINARY COMMITTEE (ECDC)**

In the matter of the complaint by

**CLEMENT MANDA**

against

**HENDERSON CHARLES MSUS OF ZODIAK BROADCASTING  
STATION**

**ECDC Case No. MCM/2408/07**

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**DEFAMING ARTICLE PUBLISHED ON ZODIAK ONLINE**

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***Members of ECDC - the Tribunal***

Counsel Madalitso Kausi, Chairperson (MLS)

Roselyn Makhambera, MIJ

Aubrey Chikungwa, MISA Malawi

Stella Chikombole, PAC

Felix Washon, BMC

***Secretary of the Tribunal***

Mr. Moses Kaufa, MCM Executive Director

**REPRESENTATION OF THE PARTIES**

**None**

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## **I. INTRODUCTION AND PARTIES**

1. This determination addresses a complaint lodged by Mr. Clement Manda, a teacher at Mpherere Community Day Secondary School in Ntchisi district (“Claimant”), against Mr. Henderson Charles Msusa, a journalist at Zodiak Broadcasting Station (collectively referred herein as “Respondent”). Claimant and Respondent shall be referred to collectively as the “Parties.” Claimant and Respondent shall be each referred to as a “Party.”
2. The complaint centers on an article published by the respondent that reported on a police case involving the Claimant, which alleged that the Claimant received money from a businessman in exchange for assisting the businessman in securing a loan from government through the National Economic Empowerment Fund (NEEF).
3. This complaint was submitted through text messages and voice notes to the Media Council of Malawi on 7<sup>th</sup> August 2024. MCM wrote the Respondent on 7<sup>th</sup> August 2024, asking for their reaction to the allegations, and got feedback on 14<sup>th</sup> August 2024. On the same 14<sup>th</sup> August 2024, MCM asked the Claimant to confirm that the case which was reportedly in court had been withdrawn, considering that MCM does not adjudicate on cases that are already in court. The Claimant submitted evidence of case withdrawal from the court on 20<sup>th</sup> August 2024.
4. Rule 1.7 of the MCM Complaints and Arbitration Procedures recognizes the role of MCM Executive Director as the first point of contact in submission and handling of complaints on behalf of the Ethics, Complaints and Disciplinary Committee (hereinafter called the “the Council”), and provides that, “the complaint shall be made to the Executive Director of the Media Council of Malawi either in person, or by telephone or in writing”.
5. Rule 2.1 of the MCM Complaints and Arbitration Procedures provides that, “the Executive Director shall immediately upon receipt of a complaint transmit it to the Respondent who shall be expected to comment on it within 14 days of its receipt.... For the avoidance of doubt, the maximum period within which a Respondent will be deemed to have received the complaint will be 7 days regardless of the manner of transmission.”
6. Rule 5.2 of the Complaints and Arbitration Procedures provides that, “accordingly, the determinations shall not be used as evidence in any court of law for any legal proceedings. The intention behind these arbitrations is to facilitate understanding and accountability within the media sphere while respecting the separate judicial processes that may exist”.

## **II. BACKGROUND OF THE CASE**

### **A. Complaint Submission**

7. On 7<sup>th</sup> August, the Council received a complaint from Mr. Clement Manda (the Claimant), a teacher at Mpherere Community Day Secondary School in Ntchisi district.
8. The Claimant alleges that the Respondent published an article which has caused significant harm to his personal and professional life. He alleges that a ZBS reporter, Henderson Charles Msusa, wrote a story, published through Zodiak Online which contains false information.
9. The Claimant alleges that the article was defamatory and damaging to his reputation, asserting that the article misrepresented facts of the police case and lacked contextual balance.
10. The Claimant says, the story is depicting him as having deceitfully obtained money (MK500,000) from one businessman, promising to help him access a loan from National Economic Empowerment Fund (NEEF).
11. The Claimant says he was only a middle-man who sourced a Consultant (Mr. Davis Salatiele) to help the businessman. It was the Consultant who charged a fee of MK500,000, which the businessman paid. It later transpired that when the businessman took the documents to NEEF, he was told that issuing of business loans was temporarily suspended and priority was given to those seeking agricultural loans. At this time, the businessman withdrew his loan application and demanded that Mr. Manda and the Consultant pay back the MK500,000.
12. Although the ZBS journalist quoted Police Public Relations Officer for Ntchisi, Salome Zgambo as his source, the Claimant insists that the police officer has denied giving the reporter the assumed wrong version of the story.
13. Meanwhile, the Claimant was in the process of seeking court redress, but some friends have advised him to seek the intervention of MCM, other than the court. He submitted along court documents that affirm the opening of a court case against the respondent as well as closure of the case.

### **B. The Respondent's Position**

14. The respondent agrees that that on the said day, their online platform published a story on the said matter and it was authored by Henderson Charles Msusa.
15. The respondent contends that the report was based on a legitimate police case and was in the public interest to disclose such matters, particularly given the implications for ethics in public service. "The story was published on the premise of TRUTH, i.e. (1) that the businessman

lodged a complaint against the Claimant, (2) that Ntchisi police arrested Mr. Claimant not the consultant, (3) that the Claimant paid back the money for which he was arrested, (4) that the said businessman accessed the sought after documents from Mr. Claimant and not the consultant.

16. The respondent argues that the publication adhered to journalistic standards of accuracy and fairness. “The focus of our story was to record events as they happened to the Claimant in relation to the matter of the loan application by the businessman, where the Claimant admits to have played "middleman".”
17. The respondent argues that NEEF loans are public finances, therefore of public interest, and that it is the role of media to ensure that all processes to its acquisition are clearly understood by all and that any incidents that prop up the name of NEEF should, therefore, be of interest to Malawian tax payers.

### **III CONDUCT OF ARBITRATION**

18. The Council, has considered the evidence and testimonies from both parties and the affected parties.
19. The following documents have been reviewed: (a) The published article, (b) statement from both the complainant and respondent, (c) court documents (summon to Henderson Msusa, Affidavit of defense transferring suit from the journalist to ZBS, and notice of Dismissed Case), and (d) relevant legal provisions and professional guidelines regarding freedom of the press, defamation, media professionalism, and public interest.

### **IV. THE CONSULTANT’S EVIDENCE**

20. For purposes of ruling on the claim, the Council assumes the evidence alleged by the Claimant. The evidence set out below therefore comes from the Consultant as mentioned by the Claimant.
21. In a phone call with Mr. Davies Salatiele (the Consultant) on 14<sup>th</sup> August 2024, the Consultant confirmed to Council that he received money from the said businessman through the Claimant and processed the documents in question, which were duly submitted to the businessman through the Claimant.
22. The Consultant agrees that the police called him to confirm this and he did, but he was away at that time such that he could not make it to the police station.
23. The Consultant confirmed knowledge that the Claimant paid back the said amount of money and was accordingly released from police custody.
24. The Consultant confirmed that he has not yet refunded the money to the Claimant, and refused to reveal if any arrangements have been agreed with the complainant to that effect.

## **V. EVIDENCE FROM THE NTCHISI POLICE PUBLIC RELATIONS OFFICER**

25. In a phone call with the Council, Ntchisi Police Public Relation Officer, Salome Zgambo, confirmed that the Claimant was indeed arrested on 26<sup>th</sup> July 2024 on the said allegations.
26. According to the Police PRO, although she was quoted in the story, she was not on duty at the time of the incident, and did not give an interview to the reporter as she was attending a funeral elsewhere.
27. The Police PRO, later checked with her colleagues at the Police station who confirmed of the incident.
28. The Police PRO assumes that the reporter took advantage of their good working relations to quote her in the story even though she did not grant an interview.
29. The Police PRO confirmed (1) that the businessman indeed lodged a complaint against the Claimant, (2) that Ntchisi police arrested the Claimant not the consultant, (3) that the Claimant paid back the money for which he was arrested.

## **VI. LEGAL TEXTS**

30. Section 7.1(vi and vii) of MCM Constitution provides:

(vi) Upon receipt of any complaint, the 'Council' Committee shall aim at resolving the matter through mediation and negotiations...

(vii) Upon determination of a complaint the 'Council' Committee may: a) Censure; b) Order an apology; c) Order publication of the corrected version of the article from which the complaint arose; d) Order full publication of the results of the hearing.

31. Rule 2.4 of the Arbitration procedures provides that, "The Executive Director shall give his/her opinion to the parties as to the resolution of the dispute and if the parties accept this opinion, it shall be binding on them as if it were the decision of the Committee. Where either party rejects the opinion, the matter shall immediately be referred to the Committee for adjudication and the parties shall be advised that they may bring witnesses at such hearing and in the event that they want to furnish more written evidence, they must provide such evidence within 14 days of the Executive Director's decision to afford the Committee time to consider it."
32. Rule 4 of the Arbitration procedure provide that:
  - 1) The Executive Director shall cause any findings, reason for a finding and/or requirements of the Committee to be sent to the complainant and to the respondent who shall carry out the Committee's directions to put into effect any decision which the Council may have taken.
  - 2) The Committee may censure the offending party, may direct that such party publishes the findings of the Council and an apology or retraction of the offending material within a prescribed period and where possible in such conspicuous manner as the offending article itself may have been published.
  - 3) There shall be no right of appeal against the decision of the Committee within the Media Council of Malawi but parties are at liberty to pursue the matter in a court of law.

33. The Malawi Penal Code (201) defines Defamatory matter as, “a matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation”.
34. The Malawi Penal Code (200) says, “any person who, by print, writing, painting, effigy, or by any means otherwise than solely gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, shall be guilty of the misdemeanor termed ‘libel’”.
35. The Malawi Penal Code (203) says, “any publication of defamatory matter concerning a person is unlawful ....., unless (a) the matter is true and it was for the public benefit that it should be published ....”.
36. The Malawi penal Code further in (205) says, “a publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it ...”
37. Section 1.1 of the Malawi Media Code of Ethics and Professional Conduct requires that, “a journalist shall promptly correct or cause to correct with due prominence, inaccuracies, misleading statements or distortions that have been published or broadcast and; (i) whenever appropriate, make a public apology with due prominence for errors published or broadcast, (ii) grant organizations or individuals the right-to-reply where the same is required”.
38. Section 2.2 of the Malawi Media Code of Ethics and Professional Conduct further requires that, “a journalist shall strive for accuracy, interpreting and reporting with fairness and scrupulous honesty, disclosing all essential facts to a story. (i) ensure there is fair opportunity and access to the right-to-reply, (ii) ensure there is no distortion or suppression of relevant facts”.

## VII DETERMINATION

39. Upon careful consideration of the evidence presented and the applicable legal and professional provisions, the Council finds as follows:

- (1) **Public Interest:** The respondent is entitled to report on matters of public interest, especially concerning public institutions. However, with this right comes the obligation to ensure that such reporting is balanced, accurate, and devoid of sensationalism.
- (2) **Accuracy and context:** The respondent’s article primarily focused on the police case and included significant details about the alleged transaction between the Complainant and the businessman, including that the complainant refunded the said amount of money. However, certain context was lacking, particularly regarding the specifics of the Claimant’s role in the transaction and the nature of the allegations. The respondent needed to ensure there is fair opportunity and access to the right-to-reply on the part of the Claimant. The absence of this context led to potential misrepresentations by the public who had access to the publication.

## VIII CONCLUSIONS AND RECOMMENDATIONS

42. Based on the above findings, the Council concludes as follows:

(1) **Acknowledgement of Rights:** The respondent has the right to report on matters of public interest and did not intentionally seek to defame the complainant.

(2) **Need for revision:** The respondent is asked to publish a follow-up article **within 21 days**, that provides clarification regarding the case, including the complainant's perspective and any developments in the matter. This will help mitigate the impact of the initial report.

(3) **Professional development:** The journalist should be oriented adequately on ethical reporting, particularly focusing on issues of defamation and sensitivity when covering cases involving the police, public institutions and public figures.

43. The Council emphasizes the need for balanced reporting that respects the rights of individuals while serving the public interest.

44. This determination is final, and both parties are encouraged to adhere to the recommendations provided herein.

45. This determination is made in the interest of fostering dialogue and resolving disputes arising from the practice of journalism and the concerns of individuals involved. It is imperative to note that this determination represents the findings and recommendations of the Media Council of Malawi and is intended solely for the purpose of addressing the specific complainant at hand.

46. Accordingly, the determination shall not be used as evidence in any court of law for any legal proceedings. The intention behind this arbitration is to facilitate understanding and accountability within the media sphere while respecting the separate judicial processes that may exist.

47. The parties involved are encouraged to view this determination as a constructive step towards promoting ethical journalism and ensuring the protection of individual rights.



Signed: \_\_\_\_\_ DATE: 24<sup>RD</sup> DAY OF AUGUST, 2024

**MOSES KAUFU**

**EXECUTIVE DIRECTOR**

**SECRETARY TO ETHICS, COMPLAINTS AND DISCIPLINARY COMMITTEE**