



ETHICS, COMPLAINTS AND DISCIPLINARY COMMITTEE (ECDC)

In the arbitration between

DUNCAN BVOMERANI

Claimant and

NATION PUBLICATIONS LIMITED (NPL)

Respondent

ECDC Case No. MCM/2208/01

Copyrighted article, published on the website of NPL

Members of ECDC - the Tribunal

Counsel Madalitso Kausi, Chairperson (MLS)

Counsel Natasha Mbalule, WLA

Roselyn Makhambera, MIJ

Aubrey Chikungwa, MISA Malawi

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 case concerns a dispute submitted to the Ethics Complaints and Disciplinary Committee of the Media Council of Malawi (hereinafter called The Tribunal) by Mr. Duncan Bvomerani, Programme Director of GISC Insurance Career Centre (“Claimant”), against the Nation Publications Limited (NPL) of Malawi (“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 dispute relates to an article originally authored by the Claimant (Duncan Bvomerani) but appearing on the Respondent’s website with its authorship credited to the Respondent’s employee (Dumbani Mzale). This dispute was submitted on the basis of copyright violation, first to the Respondent on May 20 2022 and thereafter to MISA Malawi on 31st May 2022. It was then submitted to the Media Council of Malawi on 30th June 2022.
3. MCM wrote the respondent on 4th July following up on whether the issue was sorted out or not bearing in mind the fact that the complaint was already submitted to the party. The respondent contacted MCM on 5th July and 12th July to assure the Tribunal that they are investigating the matter and will get back with feedback as soon as possible. The respondent finally communicated its response on 10th August, 2022.
4. Rule 2(4) of the Complaints and Arbitration Procedures (“Arbitration Rules” or “Conciliation Procedure” or “Rules”) recognizes the role of MCM Executive Director as the first point of contact in submission and handling of complaints on behalf of the Tribunal and 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 (The Tribunal)...”
5. Rule 1 (3) of the Complaints and Arbitration Procedures (“Arbitration Rules” or “Conciliation Procedure” or “Rules”) provides that, “a complaint shall be made as soon as possible, but not later than one month after the publication or the broadcast of any material or any alleged misconduct or breach of the Code of Ethics and Professional Conduct.” However, Rule 1 (4) of the same Arbitration Rules allows that, “The Executive Director may upon reasonable grounds accept a late complaint if in his/her opinion there is a good and satisfactory explanation for the delay.”
This case concerns a publication online whose lifespan remains valid until it is removed from the platform.

II. PROCEDURAL HISTORY

A. Complaint Submission

6. On June 30, 2022, pursuant to Rule 1 (3) of the Arbitration Procedures, the claimant submitted a written complaint on “copyrighted article titled “Liquidation of Citizen Insurance: Winners and losers”, currently published on the website of Nations Publications Limited (the respondent).
7. The MCM Executive Director wrote the respondent on 4th July following up on whether the issue was sorted out or not bearing in mind the fact that the complaint was already submitted to the party. The respondent contacted MCM on 5th July and 12th July to assure the Tribunal that they are investigating the matter and will get back with feedback as soon as possible.
8. The respondent finally communicated its response on 10th August, 2022.
9. Subject to Rule 1(4) of the Arbitration Procedures, the Executive Director acts of behalf of the Tribunal (“ECDC” or “MCM”).
10. All decisions made by the Executive Director, in this case, are made in Consultation with the Tribunal, specifically the ECDC Chairperson (Counsel Madalitso Kausi of the Doreen & Cuthbert Lawyers, and representing the Malawi Law Society in the ECDC and MCM Board.

III. LEGAL TEXTS

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

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

(vii) Upon determination of a complaint the 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.

12. Rule 2(4) of the Arbitration procedures (“Conciliation Procedure) 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.”

13. 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.

IV. THE CLAIMANT'S FACTUAL BACKGROUND

14. For purposes of ruling on the claim, the Tribunal assumes the truth of the facts alleged by the Claimant. The factual background set out below therefore comes from the Claimant's Request for Arbitration.
15. In a letter of complaint submitted to MISA Malawi dated 31st May 2022 and resubmitted to MCM on 30th June, the Claimant sought MISA's professional and authoritative intervention on his claim which was made under the Copyright laws against his article currently running on the website of Nations Publications Limited (NPL) with its authorship credited to Dumbani Mzale, an employee of NPL.
16. To all intents and purposes, the Claimant allowed MISA Malawi to treat the letter as his personal and formal complaint to MISA Malawi against NPL as its corporate member.
17. The Claimant attached an addendum of relevant documents and materials as evidence that the digitally published article infringed his copyright as the legitimate author of the original article which was initially published in The Nation newspaper on 11 December 2022.
18. Copy of the evidence material was presented to NPL as prima facie evidence to legitimize his complaint.
19. The Claimant also attached the infringing article as a screenshot on his phone from NPL website on 5 May 2022; an original article as published in The Nation newspaper with a different by-line.
20. The claimant intends to write an insurance book building on all his articles. Therefore, he claims that copyrighting of his published work is a serious infringement that will affect authenticity of his authorship.

V. THE RESPONDENT'S POSITION

21. The respondent agrees that the story being referred to, was first published in The Nation (Print) newspaper of December 11, 2014, having been sent to them by the Claimant. The article, as seen from the documentation the claimant supplied, carried his by-line as the author. In the Nation, the article appeared under Business Review page 4.
22. The same article was uploaded online on December 11, 2014. The article was probably published online because it is NPL policy to publish online articles that have been published in the print copy of The Nation, Weekend Nation, Nation on Sunday and Fuko.
23. The respondent admits that, it was an honest mistake to have the article online appear with the byline for Dumbani Mzale other than Duncan Bvomerani. Otherwise, if they wanted to 'own' the material, they would not have published it under his name in print only to make it their own online.
24. The respondent attributes the mistake to a system error during the process of uploading.
25. The respondent further explains that the Nation Online website back-end system sort of memorizes phrases and names. Once you punch in the first two letters of a name, it shows the name and the webmaster might have subconsciously hit the enter button without fully reading the full name— i.e. Du (for Duncan) and Du (for Dumbani).
26. In cases where there is a mix-up of bylines, once that is noted, the webmaster simply goes back to the back-end and corrects it.
27. Accordingly, the respondent assures that, had the Complainant alerted them to the matter eight years ago, they could promptly have corrected it just as they are ready to do so now.

VI. RESPONDENT'S OFFER OF AMENDS

28. The Respondent is offering amends by way of correcting the online article and apologizing to the Complainant for the mistake.

VII CLAIMANT'S POSITION

29. The Claimant is claiming legitimacy of authorship of the online article as reflected in the original article which was published in The Nation newspaper on 11 December 2014.
30. The Claimant asked MISA Malawi and practically MCM to investigate the matter with soberness, professionalism and impartiality while upholding ethical journalism.

VIII. TRIBUNAL'S ANALYSIS AND CONCLUSION

31. The tribunal notes that the Claimant has taken long to complain, against Rule 1(3) which provides that, "A complaint shall be made as soon as possible, but not later than one month after the publication or the broadcast of any material or any alleged misconduct or breach

of the Code of Ethics and Professional Conduct.” The infringement in question was made in December 2014 and the complaint submitted after seven (7) years.

32. However, the Tribunal finds the infringement still valid as the publication is still living on the Respondent’s online platform.
33. The Tribunal finds that the Respondent erred in crediting authorship of the online article to its employee other than the Claimant who is the original author.
34. The Tribunal notes that the Respondent accepts to have made the mistake without further arguments, though attributing it to a system error.
35. The Tribunal is convinced that the mistake was not deliberate.

IX TRIBUNAL’S DETERMINATION

34. For the reasons set forth above, the Tribunal decides as follows:

- (1) The Respondent immediately corrects authorship of the article on its online platform.
- (2) The Respondent apologizes in writing to the Complainant, publishing the same apology on the online platform in question, for the mistake made within seven (7) days from the date of this determination.
- (3) No financial compensation shall be made to the Claimant as per MCM arbitration rules.



Signed: _____ **DATE: 16TH DAY OF AUGUST, 2022**

MOSES KAUF
EXECUTIVE DIRECTOR
SECRETARY TO ECDC, THE TRIBUNAL