



ETHICS, COMPLAINTS AND DISCIPLINARY COMMITTEE (ECDC)

In the arbitration between

MS. TIONGE HARA (FREELANCE JOURNALIST)

Claimant and

MR. COLLINS MTIKA OF

CENTRE FOR INVESTIGATIVE JOURNALISM MALAWI (CIJM)

Respondent

ECDC Case No. MCM/2210/01

Plagiarized article, published on the website of Grazersnews.org

Members of ECDC - the Tribunal

Counsel Madalitso Kausi, Chairperson (MLS)

Counsel Natasha Mbalule, WLA

Roselyn Makhambera, MIJ

Aubrey Chikungwa, MISA Malawi

Joseph Mwale, NPL

Secretary of the Tribunal

Moses Kaufa, MCM Executive Director

REPRESENTATION OF THE PARTIES

None

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I. INTRODUCTION AND PARTIES

1. This case concerns a complaint submitted to the Ethics Complaints and Disciplinary Committee of the Media Council of Malawi (hereinafter called The Tribunal) on 28 September 2022, by Ms. Tionge Hara a Freelance Journalist of P,O Box 258, Mzuzu. (“Claimant”), against Mr. Collins Mtika of Centre for Investigative Journalism Malawi (MIJM) (“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 (Tionge Hara) on 5 November, Nyasatimes website carrying the title “Chinese shoes swallowing Malawi’s shoe making SMEs” and thereafter published by the same author on 4 April 2022, Africa-China Reporting Project website carrying the title, “Under siege: Chinese shoes swallowing Malawi’s shoe-making SMEs”. The Claimant contends against an article authored by Mr. Collins Mtika, published on 23 September 2022 appearing on Grazernews.org website titled, “Malawi shoemakers suffer Chinese wear and tear”.
3. 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)...”
4. 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 publications online whose lifespan remains valid until it is removed from the platform.

II. PROCEDURAL HISTORY

A. Complaint Submission

6. On September 28, 2022, pursuant to Rule 1 (3) of the Arbitration Procedures, the claimant submitted a written complaint on “plagiarized article titled “Malawi shoemakers suffer

Chinese wear and tear”, published on the website of Grazersnews as of the day of the complaint.

7. The MCM Executive Director wrote the respondent on the 28 September 2022 seeking the respondent account of the matter.
8. The respondent responded the same day evening of 28 September 2022.
9. Both parties were asked to share copies of their contract. The claimant’s copy was only electronically signed by her and, according to her, was later submitted to CIJM for signatures of the other party. The final copy duly signed by both parties was shared by the respondent signed on 11 September 2021 and both parties agree to the originality of the contents. Mr Mtika signed as CIJM Executive Director, whereas Mr Dan Msowoya signed as CIJM Board Chairman.
10. The contract was effective from 13th September 2021 to 28th October 2021.
11. 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. THE CLAIMANT’S FACTUAL BACKGROUND

11. 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 verbatim.
12. In 2021, I won a grant under Centre for Investigative Journalism Malawi (CIJM) on the story concept that I submitted. The grant was for the period of one month, September 2021 to October 2021. In the grant agreement, under Title rights, clause (B) it is stated that CIJM will fully acknowledge the grantee when reproducing his/her investigative work. Surprisingly, I woke up to news departing from the stated clause.
13. On 27 September 2022, I learnt with shock that CIJM, in particular Mr. Collins Mtika had published a story which is basically my concept with a few edits. The story was published on 23 September 2022 on Grazers news website.
14. I personally find this disturbing as it does not reflect the media code of ethics and professional conduct. Chapter 3 (3.3) of the Malawi Media Code of Conduct and Professional Conduct is clear on Plagiarism and does not encourage it. This then breaches the above section and is an act of professional misconduct.

15. Following are the links to the stories:

<https://www.nyasatimes.com/chinese-shoes-swallowing-malawis-shoe-making-smes/>

<https://africachinareporting.com/under-siege-chinese-shoes-swallowing-malawis-shoe-making-smes/>

<https://grazersnews.org/archives/218500>

IV. CLAIMANT'S POSITION

11. The Claimant is claiming legitimacy of authorship of the online article and is demanding:

1. A published apology from the Claimant to appear on the platform where the respondent published the story.
2. Re-publication of the story on the same platform but with her byline.
3. An apology from grazersnews.com for publishing a plagiarized story.

V. THE RESPONDENT'S POSITION

12. The respondent responded on the 28 September 2022 as follows verbatim:

13. *"Tionge was one of the journalist given grant by CIJM to do the aforementioned story.*

14. *Copyright of copies produced under CIJM grant belongs to CIJM and not the author.*

15. *Like many people we give grants, Tionge and others never read and understood the grant contract terms.*

16. *As head of the CIJM, all copy produced under CIJM belongs to CIJM and CIJM can do whatever it wants with copy it supports and funds.*

17. *I used that copy under the auspices of CIJM, the copyright owner, of which I am director and founder.*

18. *I reject all allegations of plagiarism as baseless and frivolous.*

19. *Journalists must learn to read and understand contracts they enter into and not rush to receive money like manner from heaven. They need to seek legal advice."*

VI. LEGAL TEXTS

20. 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.

21. Part 4 (a) of a fixed term contract between the two parties, read together with Part 2 (a) affirms that the Claimant was contracted by CIJM to research and produce an investigative story along the story proposal approved, unearthing how the presence of Chinese has killed the manufacturing businesses of SMEs in Malawi.
22. Part 3 (a) of the contract shows that the Claimant was supposed to be paid by the respondent for the publication after fulfilling all contractual requirements for the duration of the contract between 13 September 2021 and 28 October 2021.
23. In Part 8 (c) of the contract, CIJM committed to fully acknowledge the grantee when reproducing her investigative work.
24. Part 10 of the same contract affirms that the contract shall be interpreted according to the laws of the Republic of Malawi.
25. Section 34.(1) of the Malawi Copyright Act of 2016 says, “Unless there is evidence to the contrary, when a work is created by an author in the course of his employment or as a commissioned work, the rights of the author in respect of the work shall vest in the employer or the party that commissioned the work.”.
26. 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.

VII. TRIBUNAL’S ANALYSIS AND CONCLUSION

27. The tribunal notes that the contract between the parties (Part 9) provides for arbitration of matters arising from the agreement by a Committee comprising of the respondent, the Board Chairman and a Programmes manager. It finds therefore, that the committee is compromised and could not handle the matter because the respondent is directly a member of the committee.
28. The tribunal finds that commitments made in the contract between the parties are legally binding and need to be treated as such. This means Part 8 (c) of the contract, where CIJM committed to fully acknowledge the grantee when reproducing her investigative work, still holds.
29. The tribunal finds that the contract between the parties does not provide for CIJM personnel to personally use or derive the publications under the copyright of CIJM as a result of institutionally contracted publications, and presupposes that attribution for such derivative work should be made to the original author who is the Claimant and the copyright owner in this case, CIJM.
30. Based on Section 34 (1) of the Malawi Copyright Laws of 2016, the rights of the author in respect of the work vests in CIJM and not the respondent as a person.

31. The Tribunal finds that the Respondent erred in failure to indicate clearly (e.g. with quotation marks or indent and different font) phrases or passages taken verbatim (word-for-word) from the published text without crediting the original text and author; crediting authorship of the online article to himself as CIJM employee other than the Claimant who is the original author.
32. The Tribunal finds that respondent erred in: (1) failure to acknowledge the author where phrases or passages were taken verbatim (word-for-word) from the published text; and (2) using the patch-writing (cut-and-paste) method, without acknowledging the author of the source work and the copyright owner.
33. The Tribunal is convinced that the mistake was deliberate.
34. Part 3.0 of the Malawi Media Code of Ethics and Professional Conduct (2020) says a journalist shall not indulge in plagiarism.

VIII TRIBUNAL'S RESOLVE OF REMEDIES

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 attributing the information to its rightful author and copyright owner.
 - (2) The Respondent apologizes in writing to the Complainant, publishing the same apology on the online platform used, 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: 31ST DAY OF OCTOBER, 2022

MOSES KAUF

EXECUTIVE DIRECTOR

SECRETARY TO ECDC, THE TRIBUNAL