THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT KAMPALA

Miscellaneous Cause No. 73 of 2009

In The Matter Of An Application For

Judicial Review

The Pepper Publications Ltd ::::::::::::::::Applicant

And

VERSUS

1. **The Disciplinary committee Of Media Council**
2. **Attorney General ::::::::::::::::::: Respondents**

BEFORE: HON JUSTICE V.F. MUSOKE-KIBUUKA

R U L I N G

The application was presented under section 36 of the Judicature Act and Statutory Instrument No. 11 of 2009, providing for the rules of procedure for applying for judicial review.

The applicant sought the following reliefs:-

a) a declaration that complaints numbers MC/002/2009. MC/003/2009 and MC/004/2009, were wrongly made against the applicant before the Media Council;

b) a declaration that the first respondent has no authority or jurisdiction to hear and entertain the complaints set out in (a) above;

c) An order of certiorari quashing the decision of the first respondent in which the first respondent decided that it had jurisdiction to hear the complaints, and

d) an order of prohibition and injunction restraining the first respondent from hearing the three complaints;

In brief, the background to this application may be stated as follows:-

The first respondent is established by the provisions of section 8 (1), of the Press and Journalist Act, Cap, 105. The first respondent, **inter alia**, is vested with powers under section 9 (1) (a) and (c), to regulate the conduct of and to promote good ethical standards and discipline among journalists. The first respondent is similarly, vested with powers to exercise disciplinary control over journalist, editors and publishers.

At different times, during the year 2009, the first respondent received three distinctive complaints. Those complaints were, apparently, presented under section 31, of the Press And Journalists Act. They were, variably

presented either against the first respondent or against the Red Papper News Paper, a publication by the first respondent. The three complaints were as set out below.

- MC/002/2009 – Samer Agriculture And Livestock Ltd vs. Red Paper Newspapers.
- MC/003/2009 – Libya Arab People's Bureau Vs. Red Paper News Paper; and
- MC/004/2009 – Habib Kagimu Vs. Red Paper Publications Ltd.

MC/003/2009, came before the first respondent for determination on 23rd March, 2009. Several preliminary objections were raised. One of them was that the first respondent had no jurisdiction to entertain that complaint because it was not competently presented before it in accordance with section 131 of the Press and Journalist Act. It was argued that the complaint could only competently lie before the Medial Council against a journalist who was registered as such. It could not lie against a media or publishing house. The complaint ought to be proved to constitute professional misc-conduct. The journalist must have infringed the code of conduct for journalist which is setout in the fourth schedule to the Act.

On 23rd March, 2009, the first respondent made a decision overruling the preminary objection. The first respondent surprisingly, held that the matter was to proceed and be determined on its merits as against the Red paper publication Ltd. and ***the Editor of the Red Pepper News Paper*** (emphasis added). The complaint had been clearly presented before the Media Council against the Red Paper Publications Ltd. only.

The decision of first respondent in complaint No. 003/2009 is attached at R, to the affidavit of Mr. Johnson Musinguzi in support of this motion.

The only issue court has to determine in this application is whether a complaint can be competently brought against a person other than a journalist and be competently entertained by the Media Council.

In his submission, learned counsel, Mr. Mutabigwa was that learned counsel Mr. Madete, who appeared for both respondents, did not agree with the submissions made by Mr. Mutabingwa. He insisted that under section 31, of the Press and Journalist Act any person could present a complaint against a media house. Mr. Madete referred court to the provisions of section 9 (1) (c), of he Act which

stipulates that one of the functions of the Media Council is to exercise disciplinary control over journalists editors and publishers. He concluded that a complaint could be filed with the disciplinary committee under section 31 (1) of the Act, and competently be entertained by the Committee.

For greater charity the provisions of section 31 of the Press And Journalist Act, are produced bellows:-

> ***"31 (1) A complaint or an allegation against a journalist, which if proved would constitute professional misconduct, may be made to the disciplinary committee by any person, and the complaint or allegation shall be reduced into writing.***
>
> ***(2) The secretary shall, upon receipt of the complaint, within thirty days, refer the matter to the committee which shall fix a date for the hearing of the complaint.***
>
> ***(3) The committee shall give the journalist against whom the complaint or allegation is made an opportunity to be heard and furnish him or her with a copy of the complaint and***

any other relevant document at least fourteen days before the date fixed for hearing."

In court's view, the argument that a complaint against a media house or newspaper can be presented to the media council and the Media Council can competently entertain such complaint stands very far from being legally tenable. The following are some of the reasons for that conclusion.

First, section 31 (1) is clear and unambiguous. It's words must in their grammatical and ordinary meaning, be given effect. The golden rule of statutory interpretation is applicable here. According to that rule as stated in ***Englandly Lord Wensleydale in Grey vs. Pearson (1857) 6 HLC61,106 and re-stated by Lord Blackburn in Caledonia*** **Raichway vs. North British Railway (1881) 6 A.C. 114,** in constructing any provision of a statute, the grammatical and ordinary sense of the words is to be adhered to unless doing would lead to some absurdity or some repugnance or inconsistency with the rest of the statute would arise. In such case, the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity or inconsistency, but no further.

The onus of slowing that the words, do not mean what they say lies heavily upon the party who alleges so. He or she must advance something which clearly shows that the grammational construction would be repugnant to the intentions of the legislature or would lead to manifest absurdity or would not carry out the objects of the legislation itself. To court, the words used by the legislature in subsection (1) of section 31, are very clear and unambiguous. They are,

> " ***A complaint or an allegation against a journalist, which if proved would constitute professional misconduct, my be made to the disciplinary committee by any person ----- (emphasis added)***

There is, therefore, no need to refer to any other part of the Press and Journalist Act or the long little of that Act for the construction of those words.

Second, in court's view, the respondents have not discharged the onus of showing that the grammational and ordinary meaning of those words would lead to an absurdity or failure of the intentions of the legislative or the objects of the Act itself.

Third, it is clear that the jurisdiction of the Media Council to regulate the conduct and promote good ethical standards and discipline of journalist is contained in section 9 (1) (a) of the Act. Any complaint presented under section 31 (1), of the Act must be proved to constitute professional misconduct. It is heard and determined by the displinary committee of the Council whose sole function is to enforce the professional code of conduct contained in the fourth schedule to the Act. All the 9 rules of professional conduct contained in the code of conduct in the forth schedule speak of journalist thoughtout. There is nowhere a media house is mentioned as being bound by those rules of conduct. It appears to be a matter of more common sense in any case that a media house be bound by any processional ethical conduct. Those are proper attributes of human beings. Professionalism and ethics can be observed only by animate human being and by inanimate objects or corporations. One can only proceed against corporate bodies by way of civil suits in courts of law but not by way of disciplinary proceedings against a code of ethics. It appears to court that section 31 (1) of the Press and Journalist Act, alist Act, enacted with that principle in mind.

Fourth, Section 9 (1) (c), of the Act, which Mr. Madete relied upon to submit that a complaint can validly be presented against a media house read as below:-

> "a (1) The functions of the council shall be :
>
> b) ----------
>
> c) to exercise disciplinary control over journalists, editors and publishers."

Learned counsel's "emphasis lay upon the word **"publishers"**. To learned counsel this meant media houses and, therefore, a complaint would, legally be presented, under section 31 of the Act, against the applicant who is a media house or publisher. Court will not repeat the argument about a media house not being suitable for the attribute of professional and ethical conduct. The more tenable argument is about the construction of paragraph (c) of subsection (1), of section 9, of the Act.

It is quite clear to court that the construction rule of **eusdem generis** must be applied to that provision in order to understand and what the word "Publishers" means within the legal content in which it is used. There is equally the rule for principle of **noscitur associis**. The meaning must be derived from the associated words.

Applying the rule of **eusden generic**, court finds that the words, **journalist** and **editors** constitute a genus of human beings. They constitute a class of words of the same genus. The word, publisher, which is last mentioned must be construed and understood also to refer to a human being and not to a bloodless incorporation to which, in any case, profession and ethical attributes cannot adequately be attributed.

It, therefore, appears to this court that no complaint or allegation against a media house can competently be presented before the media Disciplinary Committee under the provisions of section 31 (1), of the Press and Journalist Act, Cap. 105. The three complaints constituting the subject matter of this application were therefore, incompetently presented. They Media ought to have been rejected by the Medial Council because it had no jurisdiction to entertain them. They would never be legally entertained by the disciplinary committee of the council because it have no jurisdiction to entertain them. Court makes the two declaration sought by the applicant, namely:-

a) that complaints, MC/002/2009, MC/003/2009 and MC/004/2009, were wrongly presented before the first respondent; and

b) that the first respondent had no jurisdiction to entertain those complaints because it's sole function is to enforce the code of ethics for journalist contained in the Fourth Schedule to the Act.

The applicant sought an order of certiorari to quash a decision of the committee made to the effect that the committee had jurisdiction to entertain MC/003/2009. certiorari cannot issue in that regard, The reason given for certiorari to issue is not tenable because the illegality related only to the wrongness of the decision in law. It did not relate to procedure through which it was reached. If a subordinate court or a tribunal makes a decision which is wrong in law, the relief cannot be certiorari. It would most probably be appeal. The ground of illegality for the issuance of certiorari differs from the mere wrongness of a decision in law. It often relates more to procedure through which the decision was made like lack of jurisdiction to make it. It never relates to the impugned decision's intrinsic wrongness in law.

Court equaly declines to issue the prerogative order of prohibitions. There is nothing on record to show that the respondents are likely to go against the declaration made herein.

Lastly, I must observe that since the Attorney General was sued and, in my view, rightly so as section 10, of the Government Proceedings Act, Cap 77, and Article 119, of the Constitution require. The Media Council is a non-corporate Governmental Body. It is appropriately represented by the Attorney General. In that case there is no need to sue it because in the first place it is not capable of being sued (even if the suit is for judicial review) and secondly, because it is constitutionally and statutorily represented by the Attorney General. It's presence as party to this suit is not only superfluous and redundant, it is also illegal. The first respondent in my humble view, is an incompetent party to this application. It is not capable of being sued. It would be struck off as a party.

The applicant shall recover it's costs from the Attorney General.

V.F. Musoke-Kibuuka

(JUDGE)

21.02.2014.

P.T.O.

13/03/2014

Parties Absent

Mr Maxion Mutabingwa

for Applicant present

Crt: Ruling as prepared by Hon Justice V.F ~~Mutesa~~ Musoke Kibuuka read in open court as directed

D/R - Civil

13/03/2014