

KZN Premier Dr Zweli Mkhize vs the Sunday Tribune

Wed, Feb 29, 2012

Ruling by the Deputy Press Ombudsman
June 18, 2010

This ruling is based on the written submissions of Ms Sibu Ngubane, for KZN Premier Zweli Mkhize, and the Sunday Tribune newspaper.

Complaint

Dr Mkhize complains about the lead story in the Sunday Tribune on February 21, 2010 headlined *Premier's family lands juicy contracts* and sub-headlined *At 25, Nokulinda Mkhize, a socialite straight out of varsity, and mom, May, scoop R3m government tender*. He also complains about several follow-up articles in the February 28 edition, headlined *My family did nothing wrong: premier* (p. 9), *Nepotism?* (p. 8) and *Now whistleblower finds himself targeted* (p. 15).

The gist of the complaint is that these articles are defamatory because they imply that Mkhize was using his position to benefit members of his family in securing government tenders and that he therefore was either corrupt or incompetent.

The complaint is then broken down into several parts:

February 21

Mkhize argues that the following three sentences in this story, that refer to his daughter's and his wife's companies, are in breach of the Press Code in that they are not true:

- "Inity Consultants is also listed on the national government's suppliers' database, but it was not clear yesterday whether it had been awarded any government work."
- "There are unconfirmed reports that companies involving Nokulinda are raking in millions in provincial government tenders, including catering, transport for the media attending government events, and communications work."
- "According to information made available to the Sunday Tribune, Bookize teamed up with another company to supply containers for sanitation and sewerage treatment at Edendale Hospital, also in Pietermaritzburg, but this could not immediately be confirmed."

February 28

Mkhize complains about three stories that "together have a cumulative effect which is further defamatory" of him:

- *'My family did nothing wrong: premier'* (page 9)

Mkhize says in this report on his February 22 media conference the newspaper continued to ignore the family's earlier statement that Inity was a dormant entity and that it had never secured work and specifically government work.

He argues that the story continued the newspaper's allegations that his daughter was "raking in millions" from the provincial government without proof.

Mkhize says the report also failed to publish his denial of the version that Bookize teamed up with another company in KZN to supply containers for sanitation and sewerage treatment at the Edendale Hospital.

He says: "The baseless allegations in the February 21 article were allowed to stand un-contradicted."

- *Nepotism?* (page 8)

Mkhize argues that the placement of his picture under this headline, with the caption that says he reckons government contracts awarded to his wife and daughter do not present a conflict of interest next to a story that is headlined *Call for KZN lifestyle audits* compounds and exacerbates the other complaints.

- *Now whistleblower finds himself targeted* (page 15)

Mkhize argues that linking his wife to the whistleblower's business compounds and exacerbates the other complaints, even if the newspaper did report that the allegation was denied in the strongest terms by the office of the premier and the whistleblower.

Analysis

The February 21 story is about the company Bookize Supply Corporation cc that has secured a government tender worth R3, 3 million from the Department of Correctional Services. Mkhize's wife, Dr May Mashego, and their daughter Nokulinda are directors of Bookize.

This information is then linked to the call by Cosatu general secretary Zwelinzima Vavi for a lifestyle audit of politicians and their relatives.

The Tribune then lists Nokulinda's companies, leading to the paragraphs that are in dispute:

1. *"Inity Consultants is listed on the national government suppliers' database but it was not clear yesterday whether it had been awarded any government work"*

Mkhize argues that:

- Reporter Nathi Olifant ignored information given to him in time for publication that Inity Consultants was a dormant entity; and
- Because Inity Consultants was dormant, the implication that it may have been awarded government work is false and without basis.

In its response, the Tribune says it was in the public interest to record that Inity Consultants was listed on the government supplier database, regardless of the fact that it was told that Inity was dormant. The newspaper adds that if it took the word of those in power as gospel, it would not be fulfilling its role as the public watchdog.

From the documentation submitted to the Ombudsman's Office, both Nokulinda and the family lawyer Ngubane did tell the journalist that Inity was dormant.

The newspaper concedes that it did get the information but it is also saying it could not take the word of those in power as gospel. There is no requirement in the Press Code

that it should. At the least, the denial should have created enough doubt to warrant further investigation – to seek corroboration of its information and to publish the response of the subjects of the serious critical reportage in advance of publication.

Mkhize continues to deny that Inity is in the government's supplier database. Reporting that it was not clear then whether it had been awarded government work was not a substitute for getting its facts right before publication.

The Code states: "Only what may reasonably be true, having regard to the sources of the news, may be presented as fact and such fact shall be published fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegations, rumour or supposition, it shall be presented in such a manner as to indicate this clearly."

The second sentence in this section of the Code is not a licence to publish allegations and rumours after you've put them to the accused people. The basic spirit of the code is to be truthful, accurate and fair. If newspapers and magazines were allowed to publish any allegations after they had obtained a denial from their subjects they would do huge harm in our society. Allegations are put to subjects if there is some substance to them.

2. *"There are unconfirmed reports that companies involving Nokulinda are raking in millions in provincial government tenders, including catering, transport for the media attending government events, and communications work."*

The nub of this leg of the complaint is in "raking in millions in provincial government tenders, including catering, transport for the media attending government events, and communications work".

Both Mkhize's wife, Mashego, and Ngubane had said, and are quoted in the story saying that they were not getting any work from the province.

Using the same standard we used earlier, the unconfirmed reports had to be investigated before publication. Reporting the rumours and then stating that they are "unconfirmed" is not enough to exonerate the newspaper.

Mkhize has submitted: "These 'reports' were never put to the complainant or members of his family for a response. They are false and would have been denied."

The Tribune has used some strange logic to respond: it says it had asked what other government/state work were members of the Mkhize family involved in. "This has not been answered to date and in the absence of a full, public disclosure of the Mkhize family business interests, the question remains valid. In the absence of such, unconfirmed reports will continue to circulate."

Is "unconfirmed reports" here equivalent to "rumours"?

A question about "reports that companies involving Nokulinda are raking in millions in provincial government tenders, including catering, transport for the media attending government events, and communications work" is completely different from a question about the business interests of the Mkhize family.

3. *"Bookize teamed up with another company to supply containers for sanitation and sewerage treatment at Edendale Hospital, also in Pietermaritzburg, but this could not immediately be confirmed."*

According to the complainant, this allegation was never put to any family member; "it is also false and it would have been denied". (Edendale Hospital falls under the provincial government and Mkhize was at one time MEC for health in the province.)

Mkhize argues that it was unfair to publish it as it had not been confirmed and it had been contradicted by Ngubane in time for publication.

In response the newspaper says "the fact that the premier's family denies it doesn't mean it is not necessarily true". It says it would be failing in its duty if it did not report information made available to it that is in the public interest.

If journalists were let loose to report all the information available to them that they believed to be "in the public interest" without any further thought, the craft would be discredited by the falsehoods we would be churning out.

There is no evidence that there was any attempt by Olifant to corroborate his statement.

As a basic, it was unfair to Mkhize and his family not to publish Ngubane's denial that Bookize had not procured work in KZN.

We accept that the newspaper's can hold the view that there is "obvious conflict of interest" when immediate members of Mkhize's family benefit from government tenders, whether such work is awarded by the provincial or the national government. The newspaper can open a discussion on tender regulations without having to use rumour and unconfirmed reports to bolster its argument.

The Tribune should have examined the tender regulations to see if the Mkhize family fell foul of them and then opened up a debate on the regulations.

We also reject the newspaper's argument that "Premier Mkhize has chosen to ignore the focus of the first article but instead latched on to two claims we said clearly in the article we could not confirm".

'My family did nothing wrong: premier'

This story is a report on the Press conference that Mkhize addressed the day after the Tribune first published this series of stories.

Mkhize is reported as defending his family's right to tender for national government work and saying that he could see no conflict of interest. The story also says he denies that his family had benefited from contracts under the control of his provincial government.

In his complaint, Mkhize says parts of his statement at the conference were ignored, particularly on Inity and his challenge that the newspaper should produce documentary evidence to confirm that Inity was registered with the government.

Mkhize says in the Press statement he had also challenged the newspaper to confirm the truthfulness of its statement on February 21 that companies involving Nokulinda were raking in millions in provincial government tenders.

He also complains that his denial on the Bookize that no such tender existed and that he challenged the Tribune to provide evidence to substantiate the allegations were not included in the story.

After reading the complete Press statement and the newspaper's report, I am convinced that the report was a fair reflection of what transpired at the conference and adequately reflects Dr Mkhize's response to the February 21 story.

The only legitimate issues that the complainant could raise are that the newspaper displayed no regret for what it had done, did not apologise and merely reported that editor Philani Mgwaba had offered the premier space to have his say and he had declined the offer.

Nepotism?

Mkhize complains that the placement of his picture under this headline, with the caption that states that he reckons government contracts awarded to his wife and daughter do not present a conflict of interest, next to a story that is headlined *Call for KZN lifestyle audits* compounds and exacerbates the other complaints.

The newspaper did not reply to this part of the complaint.

The *Nepotism?* strap is above a number of photographs of provincial government politicians and officials all denying nepotism.

The caption under Mkhize's photograph correctly reflects his views and the headline and the caption are not in breach of the Press Code.

Now whistleblower finds himself targeted

Mkhize complains about a box below a bigger story about the disposal of toxic medical waste in Welkom. In the box the newspaper says: "The Welkom whistleblower is now the target of a smear campaign from an unnamed source. Emails have been sent to a range of major newspapers, including the Sunday Tribune, alleging that the KwaZulu-Natal businessman who is in the waste disposal industry, has benefited from government contracts to the tune of R250m a year, and that Premier Zweli Mkhize's wife is linked to his business, an allegation which has been denied in the strongest terms by the office of the premier and the whistleblower himself."

In correspondence submitted by Mkhize is an email from the journalist to the premier's office in which he describes an attached email as "making very wild allegations about the involvement of the premier's wife with a medical waste company".

The attachment is an anonymous letter to the newspaper asking it to investigate the link between the premier's wife and a waste disposal company. The letter also refers the newspaper to another possible source.

There is no evidence that the newspaper investigated the allegation, except to put them to the premier's office and the whistleblower himself.

It was not fair to raise the allegations, even if to deny them, without any attempt at corroboration.

Findings

February 21 story

Inity Consultants

The newspaper did not investigate the allegations before publishing and also omitted the responses of Nokulinda and her lawyer that Inity was dormant. This is in **breach of** Section 1.2 of the Press Code: "News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts ... by...material omissions."

Raking in millions

It is true that Bookize is raking in millions from a national government contract – at least the R3,3m - but the newspaper has not shown that companies involving Nokulinda are raking in millions *in provincial government tenders*. Saying that these are unconfirmed reports does not exonerate the newspaper from doing its own investigations into the allegations.

The newspaper chose to ignore information provided by the family lawyer and by Mashego.

It is in **breach of** Section 1.1 of the code: "The press shall be obliged to report news truthfully, accurately and fairly."

Bookize teamed up with another company to supply...

The Tribune should have attempted to corroborate this information and should also have published Ngubane's denial that Bookize had not procured any work in KZN. This omission is therefore in **breach of** Section 1.2. It also **breaches** Section. 1.4: "Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report."

The newspaper reported that its information could not immediately be confirmed. Could it be confirmed or disproved at a later stage? The story does not tell us what steps were taken to try and confirm the information.

February 28 stories

'My family did nothing wrong: premier'

It is clear that Mkhize is angry that in this follow-up story the newspaper is not apologising for its February 21 one. In essence the complaints about this story are the complaints about the February 21 one.

The newspaper reasonably reflected the premier's position on the allegations in the February 21 story.

This leg of the complaint is **dismissed**.

Nepotism?

The caption under Mkhize's photograph correctly reflects his views and the headline and the caption are not in breach of the Press Code.

This part of the complaint is also **dismissed**.

Whistleblower

It was not fair to raise the allegations, even if to deny them, without any attempt at corroboration.

Here the newspaper is in **breach of** Section 1.4 of the Code: "Where there is reason to doubt the accuracy of a report and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be mentioned in such report."

Sanction

The Tribune has relied very heavily on its offer of space to the premier to put his side of the story on the record. Such an offer is a convenient way for a publication that has not adhered to the Code to shrug off its responsibilities. The publication is not acknowledging that it did something wrong.

The Code states: "A publication should make amends for publishing information or comment that is found to be inaccurate by printing promptly and with appropriate prominence, a retraction, correction or explanation."

Sunday Tribune is therefore directed to **publish** a summary of this ruling and to **apologise** to Dr Mkhize and his family for the breaches as enumerated above. The wording of the summary and the apology and their placement to be agreed to between the Ombudsman's Office and the Sunday Tribune.

Appeal

Please note that our Complaints Procedures lays down that within seven days of receipt of this decision, anyone of the parties may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Ralph Zulman, fully setting out the grounds of appeal.

Johan Retief
Deputy Press Ombudsman

Copyright © 2021 Press Council South Africa, All rights reserved. Developed by Rysis Software

Legal and Disclaimer