



**JUDGMENT OF THE INDEPENDENT MEDIA OMBUD
 COMMUNICARE (NPC) VS THE CAPE ARGUS (WESTERN CAPE REGION)**

Complaint	
Independent Media Publication	The Cape Argus
Journalist/s	Sukaina Ismail
Photographer	n/a
Complaint lodged by	Communicare (NPC)
Date complaint lodged officially	9 December 2019
Type of complaint	Defamation, misleading inaccurate news
Ruling	
Date Ruling delivered	22 January 2020
Applicable version of the Independent Media Press Code	1.0
Clauses of the Independent Media Press Code considered by the Ombud Adjudication Panel	Clauses 2, 3 and 6.3.1
Related complaints considered	N/A
Sanction / Remedy	Right of reply to be afforded to the complainant
Complaint fee	N/a
Is this report notable?	Yes
Summary of notability	Alleged defamation, damages claim, means of

	obtaining evidence and an extreme time delay.
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1. Background and Complaint

- 1.1. On 16 October 2019 the Cape Argus published a newspaper article titled "*Pensioners terrified that they could land on the street*" and Communicare (NPC) subsequently laid a complaint to the Office of the Ombud on grounds that the parts of the article were inaccurate and misleading and as a consequence, defamatory. Furthermore, that the complainant's right of reply was infringed upon in this regard.
- 1.2. The complainant's contentions are as follows, namely that the following information, that was included in the article, is incorrect;
 - 1.2.1. "...after their landlord Communicare gave them notice to vacate the premises and four thousand rands each to find alternative accomodation..."
 - 1.2.2. "A resident at Welverdiend, James Engelbrecht, who refused to take the four thousand rand and sign the relocation letter".
 - 1.2.3. That the journalist, Sukaina Ishmail, was informed off the record that the complainant is aware of the rumours regarding the four thousand rand and that it is untrue. Furthermore, that the editor should provide proof thereof and to print such allegations without proof would amount to false, negligent and irresponsible reporting.
 - 1.2.4. That the editor had failed to pose a formal question with regard to the aforementioned and had therefore infringed on the complainant's right to reply.
- 1.3. In response to the complainant, Communicare, the respondent, Cape Argus contends the following;
 - 1.3.1 Even though Communicare claims no tenants have been served notice to vacate, some of the tenants, who are extremely sceptical of Communicare, have gone as far as contacting the South African Human Rights Commission and elevated their concerns to the

Ministers Office. The Cape Argus has also supplied the Ombud with proof of attendance at the Wynberg Magistrate Court by one of the tenants regarding the matter.

- 1.3.2 That despite the fact that Communicare contends that did it not offer an incentive to tenants to leave Welverdiend, the Cape Argus was able to provide evidence of the said “bribes” that were offered in a letter provided to the Ombud, as sent to one of the tenants, dated May 2018, in the event that a tenant does not wish to adhere to the new rental adjustment. It seems, as contended by the respondent, that the tenants who cannot afford the rental adjustment are forced to vacate and offered this incentive which tenants have expressed to be a bribe.
- 1.3.3 Furthermore Communicare was given an opportunity to tell their side of the story in a subsequent article titled ‘No eviction notice served on Rondebosch elderly’ which appears on the IOL website, with the same journalist, Sukaina Ismail in the by-line to ‘put the record straight’. Found at: <https://www.iol.co.za/capeargus/news/no-eviction-notice-served-on-rondebosch-elderly-36393928>.
- 1.3.4 Despite Communicare’s defence no less than 500 complaints have been lodged against Communicare by its tenants from various places. The complaints were lodged with the Western Cape Rental Tribunal regarding forceful rental increases and the MEC of Human Settlements, Bonginkosi Madikizela has since promised to launch a probe into the operations of Communicare. Found at: <https://www.iol.co.za/capeargus/news/more-than-500-complaints-lodged-against-communicare-at-rental-tribunal-18114393>.
- 1.3.5 The Social Housing Regulator Authority has launched an investigation into Communicare. Found at: <https://www.iol.co.za/capeargus/news/regulator-to-probe-communicare-after-complaints-from-tenants-29679676>.
- 1.3.6 Lastly, it is the view of the respondent that they would be doing a disservice to the public and their readers to not accept the word of

the very people bearing the brunt of Communicare's treatment. The respondent believes that it is ironic for Communicare to claim that it is being defamed, when its very tenants are continually filing complaints against it. The reputational damage claimed is in their view not so much by the respondent's reporting, but rather by the image by which Communicare's clients hold it.

2. Ruling

- 2.1. The basis of Communicare's complaint is focused on two alleged infringements of the Independent Media Press Code, namely accuracy (Clause 2) and the issue of the right of reply (Clause 3). The Ombud will deal with each alleged infringement separately below.
- 2.2. First, Communicare's stance is that there has been an alleged infringement and manipulation of their right to reply that resulted in said defamation and negligence on the part of the Cape Argus. The Ombud is not inclined to agree with this sentiment as a right of reply was offered in a subsequent follow up article where Communicare was offered the opportunity to 'set the record straight' and clarify that there were no unlawful evictions taking place that were accompanied by bribes/incentives, despite evidence provided to the contrary.
- 2.3. There appears to be ethical issues surrounding this complaint and with regards to the subsidized housing provided by Communicare, as illustrated by the large number of complaints laid against Communicare. The Ombud does not have jurisdiction to make a judgment on these issues, this must be left to the judicial authority to determine. The true function of the Ombud is to determine if the respondent in question infringed the Independent Media Press Code or not.
- 2.4. While investigating this story, it is clear that the respondent encountered many disgruntled tenants, this is evident in the document titled "Statement of Purpose – Welverdiend Residents", meeting minutes of a meeting with Commissioner Nissen and the Welverdiend residents,

email communication between residents and the Ministry of Human Settlements, Water and Sanitation, an email sent to Patricia De Lille highlighting the grievances of the residents of Waverdiend, many letters sent by Communicare to tenants as well as rental statements provided by tenants. All of this documentary evidence was submitted to corroborate the respondents' version of events. It is the view of the Ombud that the respondent was very thorough in their investigation, and in no way acted negligently in publishing the original article, as well as the follow-up article.

- 2.5. It must be noted that despite the aforementioned, the Ombud was advised that the respondent still offered the complainant a right of reply in the form of 300 words by the editor of the Cape Argus, not as a concession, but as a measure of good faith. The Ombud finds the offer of a further right of reply to be redundant and unnecessary in light of all the facts of the case and in any other instance this measure of good faith would not have been offered by the Ombud to the complainant, as a follow-up article on behalf of Communicare was published in order to clear up any uncertainties.
- 2.6. With regards to the inaccuracy allegation, the Ombud is satisfied that the journalist provided more than enough proof. The journalist accurately reported on the first hand accounts of the tenants and their experience with Communicare, and in providing detailed documentary evidence, the respondent corroborated their article with more than just personal accounts of the tenants, paragraph 2.4 above is evidence of the fact.

3. Sanction/Remedy

- 3.1. No contravention of the Independent Media Press Code has occurred. Personal accounts of the tenants have been adequately corroborated by

the supporting documentation and a right of reply was subsequently granted to Communicare in the form of a follow-up article.

- 3.2. Despite that fact, the Cape Argus is willing to give a right of reply in the form of a 300-word article to Communicare only as a measure of good faith, which the Ombud finds redundant. However redundant, the Ombud will uphold this measure of good faith and award this right of reply.
- 3.3. The complainant will have seven days to submit such a right of reply to the Cape Argus editor, failing which, this offer will prescribe.
- 3.4. Upon receipt of the 300-word reply, the respondent will have seven days to publish the right of reply.

4. Time Delays

The Ombud would like to offer its sincerest apologies regarding the delays in delivering the judgment. Time delays were caused mainly by the need to contact sources provided, as well as the festive break.

5. Note

Adjudication Panellists: Moleboheng Mosia (Ombud Chair), Yvonne Musonza (Panel Member) and Lizaan Nel (Panel Member)