



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

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 Adjudication Panel Ruling delivered	22 January 2020
Date Appeal was lodged	30 January 2020
Date Appeals Panel Delivered Judgment	11 February 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.

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 Welferdiend, 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. PREAMBLE:

2.1 THE above matter was referred to the Appeals Panel (Michael Buthelezi, Ryland Fisher and Brijlall Ramguthie (chair), hereinafter referred to as the Panel, by the Ombud Adjudication Panel. Emailed copies of reports in the Cape Argus and related correspondence with Communicare, were sent to the above on Friday, January 31.

2.2 We were asked by the Adjudication Panel, to examine and rule on the complaint by Communicare, related specifically to editorial inaccuracies and an alleged denial of a right to reply, for the October 16 article, headed " Pensioners terrified they could land on streets," which appeared on page 1. The turn on page 2 was missing from the emailed documents. In the absence of the print documents, we had to search for the articles online, which was not ideal, because, quite often, print and online versions can differ.

2.3 Members noted that a response to the October 16 article was carried on Independent Online (IOL), but not in print. It was noted also that an article dated October 28, and headed "Street assembly tackles Communicare" was the subject of further correspondence between

the parties, and again, alleged inaccuracies and a right to reply, were raised. We could not find any evidence in the complaint that we had received, of the complainant being upset with the October 16 article.

2.4 In a bid to seek clarity, the Appeals Panel chair (BR) called the Adjudication Panel, who reiterated that we had to deal with the appeal related to the October 16 article. This sentiment was conveyed by the chair to Messrs Fisher and Buthelezi, who were clearly concerned as to whether we were dealing with the correct article, that of October 16, instead of October 28.

2.5 Earlier, an Adjudication panel, led by Ms Mosia, (with Yvonne Musonza and Lizaan Nel making up the team), in dealing with the October 16 article, ruled that the sanction/remedy in this matter, was for the Argus to afford a right of reply to the complainant, Communicare. It was noted from correspondence that the editor of the Cape Argus had indeed offered a 300-word reply to Communicare, which apparently was the one that appeared in the Online version, BUT NOT IN PRINT, by reporter Sukaina Ismail.

3. RULING:

- (1) **INACCURACIES:** While we understand that every reasonable step could have possibly been taken to verify the authenticity of claims made by the pensioners, or their spokesperson, there has to be tangible, irrefutable 'evidence' to prove such, as in the case of 'bribes' being allegedly offered. One cannot go on "rumours" or "hearsay", there has to be concrete evidence to substantiate such.
- (2) **RIGHT OF REPLY:** While there was a suggestion that the Ombud's ruling be set aside, we are, however, of the view that the right of reply should indeed be extended to Communicare, for the record to be set straight, on page 1, and turning to page 2 or 3, should there be space constraints. In recommending this remedy, it is timeous to record that the *audi alterem partem* rule, should apply instantly, ie alongside an article of the same date, instead of much later, when the impact is not the same.

4. Note

Appeals Panellists: Brijlall Ramguthie (Appeals Chair), Michael Buthelezi (Panel Member) and Ryland Fisher (Panel Member)