

## **Emails from Mr Joe Thloloe the Press Ombudsman**

From: Joe Thloloe [mailto:Pressombudsman@ombudsman.org.za]

Sent: 03 February 2012 01:11 PM

To: sbu@thesbu.com

Cc: Prinola Govenden; Sapresscomm01@gmail.com; ralph zulman; Brian Gibson Issue Management; Peter Mann; Johan Retief; Khanyi Mndaweni; laurenj@meropa.co.za

Subject: PFC hearings

Dear Mr Buthelezi,

You will recall that I promised to investigate the circumstances around your submission to the Press Freedom Commission. This I have now done.

CITY PRESS

The true sequence of events in your complaint to my office was as follows:

October 1 and October 21, 2008: My office received the complaints from Thabiso Maseko from the firm Mncedisi Ndlovu & Sedumedi Attorneys.

March 2, 2009: My office forwarded the response from City Press to Maseko and asked for his comments to help us map the way forward.

March 9, 2009: Thabiso wrote back and said he would revert back to us shortly.

March 26, 2009: I wrote to Thabiso telling him that somebody from his office had phoned our office to inquire about the complaint and that my records showed that he had promised to come back to us.

March 30, 2009: You sent me an email that stated that you had instructed Mncedisi Ndlovu & Sedumedi Attorneys to drop the matter as you had been advised by the Office of the Premier not to pursue the matter any further. You said you had, however, instructed your private attorney to continue with the matter on your instructions in your private capacity.

On the same day I responded to your email and asked you when I'd be hearing from your attorney.

You wrote back and attached a copy of an email you had received from her in which she said she had a telephonic conversation with me and I had said I would respond before the end of the following week to a March 11 2009 letter she said she had written to me.

I wrote to you saying I had had a call but assumed it was from Mncedisi Ndlovu & Sedumedi Attorneys and had written to Thabiso in response to it. I explained that I did not have a record of the March 11 letter and asked you to send it again.

That was the last we heard about these complaints until the PFC hearings. In my view they were dropped and were never reinstated. (I am sending you copies of all the correspondence immediately after this email.)

You and your attorney have since pursued other complaints through this office and at no stage did you ask us about the City Press matter.

This time-line shows very clearly that what you told the Commission, that the only communication you had received from the Press Ombudsman was the acknowledgement of receipt of the complaint, is not true.

#### THE STAR

On the other issue you raised off-the-cuff during your presentation, the appeal hearing in your complaint against the Star:

It is true that the office had to phone the Star to remind them about the hearing and we were told that the person who had been handling the matter was off sick and had been instructed by her doctor to immediately go on maternity leave. The substitute representative from the Star came 30 minutes later and was ill-prepared. This lack of preparation was referred to in the panel's ruling.

In your submission you went further and said the members of the panel had not prepared for the hearing. Judge Zulman responds: "It is absurd to suggest that the panel, and as far as I am concerned the Star, did not take the proceedings seriously. The absence of the reporter was unfortunate but was explained."

He adds: "...I reject totally the unfounded allegation that the panel had not prepared for the hearing. It had indeed prepared and spent some time on doing so. I certainly had a set of papers and simply checked that these were in accordance with what we were told at the hearing."

Another member of the panel, a public representative, Mr Brian Gibson, writes: "...I strongly dispute the that the panel did not take the proceedings seriously. The comprehensive and nuanced panel ruling is hard evidence of the attention we paid to this complex matter."

He writes: "In my working I had the complaint, the clipping, the Star's response, the complainant's further response, Johan's ruling, the notice of appeal and the appellant's heads of argument..I studied these documents carefully before the hearing.

"When we arrived at the hearing, I saw that the judge had an indexed file of what he had, including the appeals correspondence.

"The Buthelezi team then tabled a comprehensive "pleadings bundle" at the hearing, which contained a fresh heads of argument and a whole raft of supporting documentation."

Judge Zulman concludes: "In my view the complaint smacks of a disgruntled and unsuccessful party."

Regards,

Joe

Dear Mr Buthelezi,

Below is the correspondence on your City Press complaint.

Regards,

Joe

From: Joe Thloloe <pressombudsman@ombudsman.org.za>

Date: Mon, 30 Mar 2009 11:14:17 +0200

To: "Buthelezi, Sibusiso (GPTRW)" <Sibusiso.Buthelezi@gauteng.gov.za>, Thabiso Maseko <Thabiso@ndlovu-sedumedi.co.za>

Cc: Khanyi Mndaweni <khanyim@ombudsman.org.za>, <wdeklerk@telkomsa.net>, Elizabeth Barratt <elizabeth.barratt@citypress.co.za>

Subject: Re: Initial response: Sibusiso Buthelezi

Dear Sbu,

That explains the confusion. I did get a phone call and assumed it was from MNS. Hence my email to Thabiso.

I don't have a record of the March 11 letter. Could you please ask her to send it again?

Regards,

Joe

On 3/30/09 11:12 AM, "Buthelezi, Sibusiso (GPTRW)" <Sibusiso.Buthelezi@gauteng.gov.za> wrote:

I am pasting this email from my Attorney Tracy Sischy in which she says that she spoke to you

Dear Mr Buthelezi

Re: S.B BUTHELEZI AND GAUTENG DEPARTMENT OF PUBLIC TRANSPORT ROADS AND WORKS/ RCP MEDIA A DIVISION OF MEDIA 24 LIMITED

We refer to the above matter.

We had a telephonic conversation with Mr Thloloe from the Press Ombudsman and he advised us that he will respond to our letter dated 11th March 2009 before the end of next week.

Yours faithfully

pp

Tracy Sischy

From: Joe Thloloe [mailto:pressombudsman@ombudsman.org.za]

Sent: 30 March 2009 10:56 AM

To: Buthelezi, Sibusiso (GPTRW); Thabiso Maseko

Cc: Khanyi Mndaweni; wdeklerk@telkomsa.net; Elizabeth Barratt

Subject: Re: Initial response: Sibusiso Buthelezi

Dear Sbu,

This is the first time I learn that MNS are no longer part of this. When will I hear from your attorney?

Regards,

Joe

On 3/30/09 10:15 AM, "Buthelezi, Sibusiso (GPTRW)" <Sibusiso.Buthelezi@gauteng.gov.za> wrote:

My instructions to MNS was to drop the matter as i have been advised by the Office of the Premier not to pursue the matter any further

I have however instructed my private attorney to continue with the matter on my instruction in my private capacity

Sbu

From: Joe Thloloe [mailto:pressombudsman@ombudsman.org.za]

Sent: 26 March 2009 11:40 AM

To: Thabiso Maseko

Cc: Buthelezi, Sibusiso (GPTRW); Khanyi Mndaweni

Subject: Re: Initial response: Sibusiso Buthelezi

Dear Thabiso,

Somebody from your office phoned me this morning to inquire about this matter. My records show that in our last correspondence (see below) you promised to revert back to me. If you did send something, please resend it because this would mean I did not receive it.

Regards,

Joe

On 3/9/09 10:09 AM, "Thabiso Maseko" <Thabiso@ndlovu-sedumedi.co.za> wrote:

Dear Joe

Thank you for the response.

We will revert to you shortly.

Regards

Thabiso

From: Joe Thloloe [mailto:pressombudsman@ombudsman.org.za]

Sent: 02 March 2009 03:46 PM

To: Thabiso Maseko

Cc: Sibusiso.Buthelezi@gauteng.gov.za; Khanyi Mndaweni

Subject: FW: Initial response: Sibusiso Buthelezi

Dear Mr Maseko,

Please see the response from City Press below. Your comments on it will help me map the way forward.

Regards,

----- Forwarded Message

From: Willem DeKlerk <wdeklerk@telkomsa.net>

Date: Mon, 2 Mar 2009 07:30:31 +0200

To: 'Pressombudsman' <pressombudsman@ombudsman.org.za>, 'Khanyi Mndaweni' <khanyim@ombudsman.org.za>

Cc: 'Elizabeth Barratt' <elizabeth.barratt@citypress.co.za>, 'Khathu Mamaila' <KMamaila@citypress.co.za>

Subject: Initial response: Sibusiso Buthelezi

Dear Joe

INITIAL RESPONSE TO COMPLAINTS BY MR SIBUSISO BUTHELEZI AGAINST CITY PRESS (TWO COMPLAINTS)

We act on behalf of RCP Media, a division of Media 24 Limited, the owner and published of City Press.

We were recently instructed regarding complaints lodged against City Press by the Gauteng Department of Public Transport (dated 1 October 2008) and by the said department's head, Mr Sibusiso Buthelezi (dated 21 October 2008):

Our initial responses to the complaints are as follows:

1. In both matters, "City Press" is cited as the respondent, whilst article 1.2 of the Complaints Procedures provides that the respondent shall be "the proprietor of the publication, which may delegate its editor ..... to act and appear in its stead..." City Press was therefore incorrectly cited as the respondent. At all material times, the complainant was legally represented and cannot claim to have been ignorant of the provisions of the Complaints Procedures. We submit that the complaint should be rejected on this basis.

2. Article 1.3 of the Complaints Procedures provides that a complaint shall be lodged within 14 days from date of publication giving rise to the complaint. This time constraint is, we submit, specifically designed to facilitate the expeditious resolution of complaints, a founding principle referred to in both the preamble to the Press Code as well as that of the Complaints Procedures. The first complaint was lodged some 43 days after the first and some 36 days after the second article was published. Although the complainant seeks condonation, we submit that the reason for the delay is inadequately explained. City Press through its lawyers, responded to the complainant's letter of demand on 5 September yet it took the complainant a further 25-odd days to lodge his complaint. There is no explanation for this further delay. We submit that the first complaint should be rejected for this reason.

3. Article 1.5.2 provides that a complaint shall not be accepted where legal action is threatened or considered to be a possibility. Annexure "C" to the first complaint, being the complainant's attorneys' letter to City Press, legal action is threatened in paragraph 15 thereof. Furthermore, the complainant had on or about 13 January 2009 actually instituted legal action against the proprietor of City Press on the basis of the same City Press reports which form the basis of the complainant's complaint to the Press Ombudsman. Although this action was subsequently withdrawn on or about 31 January 2009, we submit that in instituting legal action the complainant had abandoned his complaint with the Press Ombudsman and/or acted contrary to the intention of the Press Code. When withdrawing his action, the complainant's legal representatives did provide us with a reason for the withdrawal, which made no reference whatsoever to the "pending" Press Ombudsman complaint. We therefore submit that the complaint has been abandoned, alternatively should be rejected on the basis of article 1.5.2 of the Complaints Procedures.

4. On a proper reading of both complaints, together with the reports which form the basis of the complaint, it is clear that both the complaints are frivolous, malicious and/or vexatious and should be rejected for that reason as contemplated in article 1.5.1 of the Complaints Procedures:

a. The first complaint makes much of the alleged "wrong" amount of the tender, but at the same time the complainant does not deny his own admission in this regard as published in the report dated 23 August (Annexure "B"), namely that certain other essential costs were not included in the figure of R480m. On the complainant's own version therefore, the figure of R480m is incorrect.

b. The second complaint is equally frivolous. By his own admission, the complainant was reprimanded by the MEC and he does not deny that he unconditionally apologised in writing, to the (then) premier for his conduct. His complaint in para 1.4 of the complaint is a pedantic attempt to create a “falsity” where none could be found. Further, his complaint in para 1.5 is seeking to label as “false” the state of another person’s state of mind. This renders the complaint impossible to adjudicate. Finally, his complaint in para 1.6 is simply wrong, on a proper reading of the report. Nowhere in the report annexure “A” is it said that the Premier “instructed” Harris to investigate the Jabulani Hospital issue. Besides, and once again, the complainant is trying to split hairs. He does not deny that Harris is (as reported) investigating his (the complainant’s) counter-allegations against the MEC, nor that these counter-allegations include the complainant’s given reasons for the non-completion of the Jabulani Hospital. All he seeks to complain about is the fact that the Premier did not instruct Harris to investigate the matter of the Jabulani Hospital, which is in any event not a claim included in the report. .

5. We therefore submit that the complainant has abandoned his claims, alternatively that they should be rejected for the reasons given above.

Regards

Willem de Klerk

Willem de Klerk & Associates

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Greenside 2034

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Fax: 011 486 4506

Cell: 082 880 6844

Email: [wdeklerk@telkomsa.net](mailto:wdeklerk@telkomsa.net)

----- End of Forwarded Message