



PO Box 26463, Windhoek

Rudie De Waal v Republikein

Ruling 1/2020

Complainant: Ms. Rudie De Waal of RDW Hunting Safaris Namibia

Article(s): 1) *Brit boos vir jagoperateur; 'Hy het my aangerand'* (tourism section)
2) *'Jagter' se prokureur onttrek* (crime section)

Author of articles: Francoise Steynberg

Date: 8 November 2019 & 11 November 2019

Respondent: Dani Booysen, Editor: Republikein

Date of Ruling: 29 January 2020

1. Particulars

This ruling is based on a complaint made by Ms. Rudie De Waal, the written response thereto by Mr. Dani Booysen, Editor of the Republikein, and inputs from the conciliation session conducted with the parties involved.

2. Complaint

Ms. De Waal is complaining about two (s) articles published by the Republikein on the 8 November 2019 and 11 November 2019 respectively. The 1st story was headlined '*Brit boos vir jagoperateur*' - '*Hy het my aangerand*' which loosely translates to '*Brit angry with tour operator*' – '*He assaulted me*'. The 2nd article was titled '*Jagter*' se prokureur onttrek' ('*Hunter's lawyer withdraws from her case*').

De Waal complains that:

- ✓ she was given insufficient time to adequately reply to the allegations made against her by Mr. Jason Rodd. For instance, the journalist, Ms Steynberg sent her a Facebook message on Wednesday, 6 November 2019 requesting her to 'contact her urgently' to respond to the allegations levelled against her. She allegedly did so and explained her side of the story, but specifically requested Ms. Steynberg, '*to keep the story on hold, so i can come in and share my version of the story*'. Despite this request the story was published two days later.
- ✓ The journalist, Ms. Steynberg, obtained and used her photo from her Facebook page without her consent;

- ✓ The articles put her life in danger i.e. she received threatening phone call after publications; and
- ✓ The publications caused her serious reputational damages and adversely affected her involvement in charity, anti-poaching programs and conservation efforts.

Ms. De Waal concludes that the stories in question were an attack on her integrity and reputation and as such defamed her.

3. The Text

The first article reports that Ms. De Waal was supposed to arrange a safari for one certain Jason Rodd, a British journalist connected to international hunting and fishing magazines. De Waal was also supposed to arrange Rodd's accommodation, the car rental, and the trip itinerary of the safari. To facilitate this some £845,47 (ca N\$16 109) was deposited in her account on the 30th of August 2019. She reportedly acknowledged receipt of the funds. Mr. Rodd was, however, never provided for an itinerary despite his requests.

Rodd arrived in Namibia the 25th of October 2019. He was met at the airport by De Waal and another unknown man. He stayed in Windhoek at a local guesthouse until the 28th. Upon checking out on the 28th he was asked to pay N\$2 100 because no pre-payment was done. He allegedly also had to pay N\$13 415 for the car rental which was booked under De Waal's name. It also transpired that no booking was made at the hunting farm Rodd was supposed visit in the Gobabis district because it was allegedly fully booked. They allegedly then had to search for another hunting farming for some four hours. Similarly, a luxury lodge near Omaruru which Rodd was to visit was also not booked.

Rodd eventually confronted De Waal on the 31st of October about all these. They eventually decided to part ways and entered into a written agreement in terms of which De Waal is to repay him £2 000 (around N\$38 107). The De Waal reportedly return to Windhoek with the rental car. Rodd could reportedly not be refunded since because the car was booked in De Waal's name.

Rodd opened a criminal case against De Waal. He alleges that De Waal broad him under the impression that she was a professional trophy hunter and hunting operator and they would share the costs. De Waal deny all allegations. She plans to institute counter criminal charges against Rodd. Such charges may include assault be threat and *criminal injuria*. At the time of publication, no case has yet been opened though. She alleges that Rod wanted to assault her because she reportedly did not want to allow him to hunt because he was intoxicated. Rodd denies these allegations.

Similar complaints were allegedly made against De Waal by unnamed sources. For instance, one such complaint was made on Facebook by a South African. The person allegedly deposited N\$15,000 into De Waal's account and suffered the same fate as Rodd. The article reveals that De Waal is not a member of the Namibian Professional Hunting Association

(NAPHA). Also, that Namibia Tourism Board (NTB) reportedly confirmed that RDW Hunting Safaris' registration as a trophy hunter without accommodation expired on 31 March 2019. De Waal is also not registered as a professional hunter or hunting operator with the Ministry of Tourism and Environment (MET). The ministry advised Rodd to open a case of corruption against De Waal with the Anti-Corruption Commission.

The follow-up article was published on 11 November 2019 under the heading '*Jagter se prokureur onttrek*' which loosely translates to '*The 'hunter's lawyer withdraws from her case.*' The article starts by indicating that Ms. De Waal's lawyer withdrew from her case. No elaboration is given for the withdrawal. Ms. De Waal reportedly informed her lawyer that it is not worth the effort to go to Gobabis to open a case against Mr. Rodd. The article in the main repeats the unpleasant experiences Mr. Rodd's had with De Waal, the criminal case he opened against her and her written undertaking to repay him.

The last segment of the article is titled ('KRAT VOL AMMUNISIE'/'Crate full of ammunition'). It reports that Ms. De Waal allegedly drives around with a crate full of different kind of ammunition in the boot of her vehicle. These allegations were reportedly made by Mr. Rodd who believed the police should investigate Ms. De Waal. The article repeats the points that De Waal is not a member of NAPHA, that she's not registered with the MET. It reports that the Republikein has since received several WhatsApp complains from professional hunters via WhatsApp alleging that Ms. De Waal also defrauded or attempted to defraud them in the past. Two unnamed sources quoted in this regard.

4. The Arguments

Mr. Booysen, for the Republikein, asserts that the news articles complained of set out the versions of both parties in a fair and balanced manner. He stressed that the alleged events were propelled into the public domain using social media platforms by the parties themselves; given the uproar this caused the newspaper decided to report on it.

He insists that a proper right to reply was afforded to De Waal; that they worked for several days on the story before it was published; also, that they communicated with De Waal and her legal representative on various occasions. De Waal reportedly contacted the news editor the evening prior to the publication of the first article. Despite her claimed of having "a lot of other evidence" on WhatsApp and the News Editor's having requested her to provide such, De Waal never provided such.

Booyesen, submits that the first story clearly states De Waal's side i.e. that she had not, and does not do business as a professional hunter or tour operator. In his view, De Waal fails to set out which part of her version was not reported on. Specifically, which information is "false", "untrue" and/or "fabricated", and which "evidence" was not considered. He accordingly strongly denies the allegations of slander and sensationalism levelled against the publication.

According to Booysen De Waal failed to provide substantiation on how her involvement in "charity" work and any other projects were adversely affected. He submits that no oral or written permission is required to publish a photo(s) which is/are already in the public domain.

During the conciliation session De Waal essentially repeated her main complaint. She insisted that she was given inadequate time to reply to state her side of the story; that the story was one-sided and a fabrication. She produced a miniature 'crate' used by her in her work to sustain her complaint of falsehood and misrepresentation against the Republikein.

5. Analysis

5.1 Right to reply

I am concerned about Mr. Booyesen's insistence of complying with their in-house 24-hour rule with reference to the right to reply. This creates the impression that their rule is absolute. This is certainly not the case. The right to reply is a flexible and contextual device and contingent on several factors. I am cognizant though that the Ms. De Waal was given the opportunity to divulge more information but did not utilize this opportunity. Consequently, I find it difficult to rule against the newspaper on this issue.

5.2 Use of Facebook Photo

The perception that anything found online is in the "public domain" because it is available to the public, is arguably, still a very grey area. With reference to photos obtained from FaceBook, it's policy titled "Sharing Your Content and Information" is instructive in that it provides:

'When you publish content or information using the public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (ie, your name and profile picture).'

Moreso, it is common cause that that non-commercial, nonprofit use of photos, as is the case in this instance, is presumptively fair. Given these considerations, the use of Ms. De Waal's photo by the Republikein, unarguably, amounted to fair use.

5.3 Crate full of ammunition:

I am of the view that not enough investigation was done to verify the meaning of '*a crate full of ammunition*' was done in this context. The use of the word 'crate' in this context, in my view, is misleading. There is a high likelihood that the reasonable reader may understand this to mean that Ms. De Waal is a dangerous and violent person. The miniature crate displayed during the conciliation session fits into the palm of Ms. De Waal.

5.4 Endangering life, loss of charity and other opportunities

The allegation as to the threat to life was not alleged in the original complaint. Also, no evidence was advanced to substantiate the allegation. The same can be said for the 'loss of charity opportunities. It is difficult to make a ruling on a mere '*I say so*'.

It is important to note that I am not saying that the story was accurate; what I am saying, though that the newspaper was reasonable in reporting the article with the sources at its disposal.

Lastly, I wish to applaud both Ms. De Waal and Mr. Booysen for the constructive and courteous way they have dealt with resolving this complaint.

6 Finding:

The compliant in respect of i) the right to reply, ii) the use of her Facebook photo and iii) endangering her life, loss of charity and other opportunities is **dismissed**.

In respect of the 'crate full of ammunition' I find that the Republikein transgressed Clause 2.1 of the Code of Ethics and Conduct. The Republikein should apologise to Ms. De Waal for the wrong impression about her persona in this regard. The newspaper's correction and apology should be published on the same page as the original print story.

7. Appeal

Our Complaints Procedures lay down that within seven (7) working days of receipt of this decision, either party may apply for leave to appeal to the Media Appeals Committee. Such an appeal is challenged through the Media Ombudsman.

John B. Nakuta
Media Ombudsman