

Press Release

3 November 2010

Complaint to Press Ombudsman about biased and vindictive campaign against Robert Gumede by Mail & Guardian

The Press Ombudsman has been asked by Robert Gumede to investigate the ethics and professional practices of the Mail & Guardian (M&G) newspaper, following revelations that at least one of its investigative journalists received payment from a businessman who fed the journalist with allegations about a business adversary - allegations that our courts have ruled were groundless.

Businessman Robert Gumede asked for the investigation by the Press Ombudsman in view of payments in 2001 by Johan Sterenberg, a British citizen and former business partner of Gumede, to **Sam Sole, an investigative journalist at the M&G**. Sole wrote disparaging articles about Gumede following these payments. This complaint comes just after a further apology was published by the M&G on 22 October 2010 as ordered by the Ombudsman and the Appeals Panel as a result of its previous defamatory articles about Gumede.

Gumede has further requested the Ombudsman to get Sole and fellow Mail & Guardian journalist Adriaan Basson to agree to a forensic audit of their bank accounts in order to check if they have received monies from Sterenberg, besides the monies Sole received in June 2001 from Applied Card Technologies (Pty) Ltd ("ACT").

Gumede has been involved in protracted legal actions with Sterenberg. Sterenberg absconded after selling ACT, an insolvent company, to Gumede in August 2001, pocketing R24 million cash and attempting to extort approximately R27 million from Telkom as well as R10 million from Gumede. This attempted extortion of Telkom is on the record at the Section 417 insolvency inquiry chaired by Adv Arnold Subel SC, into the insolvency of the company that was sold to Gumede by Sterenberg.

Four frivolous legal actions were instituted by Sterenberg but they were all settled or decided with costs in favour of Gumede and his company Guma, by the South Gauteng High Court. An action for damages flowing from unfulfilled profit warranties was instituted by Guma and judgment was granted in its favour. The outstanding indebtedness by Sterenberg and his wife to Guma is approximately R45 million. Sterenberg absconded from the country and returned to the UK and Gumede and Guma have not received a cent to date. Gumede has appointed investigators who have finally tracked down Sterenberg in the UK but he has no traceable assets. Gumede and Guma have been unable to recover any part of the R45 million debt to date.

Sterenberg instituted a claim for R2 million against Gumede. Sterenberg, who was confident that he had the support of Sole, demanded a settlement of R3 million which Gumede turned down as bizarre and an act of extortion. Following further negative publicity against Gumede, Sterenberg then increased his demand from R3 million to R10 million to settle a claim of R2 million. Sterenberg used the negative media attack on Gumede to try to extract a R10 million settlement which was R8 million more than his alleged R2 million claim.

Sterenberg admitted the payments to the M&G journalist Sole at the inquiry, which was also attended by journalist Adriaan Basson, who subsequently joined the M&G as an investigative journalist and has also written negative articles about Gumede. At no time did Sole inform the public that he had a relationship with Sterenberg, let alone that he received payments from Sterenberg and ACT, at a time when the company was technically insolvent. It is obvious that Sole was paid from monies invested by Gumede and Guma in ACT.

Despite writing unsubstantiated stories which damaged Gumede's reputation and business, neither the M&G nor Basson reported these facts about Sterenberg and Sole, which surfaced at the inquiry both Sole and Basson attended.

In spite of the evidence presented, during a four-year inquiry, which exonerated Gumede, Basson resurfaced several years later at the M&G and published two defamatory articles about Gumede in October and November 2008 without disclosing that he had historical personal knowledge of the ACT inquiry and the soured relationship between his disgruntled source Sterenberg and Gumede. His omissions resulted in him writing two misleading and false articles for which he was severely criticised in the rulings of both the Ombudsman and the Appeals Panel chaired by Judge Zulman. These rulings appear on the Press Council's website.

Gumede lodged a complaint against Basson and the M&G and both the Ombudsman and the Appeals Panel found in Gumede's favour and ordered that the M&G apologise to Gumede. The serious criticism of Basson by the Ombudsman in its decision reflects a journalist who showed lack of judgment and bias in writing articles to attack Gumede without evidence or foundation. A journalist should be independent and unbiased. The Ombudsman decided to write an apology that the M&G had to publish without amendment because of its unprofessional behaviour.

For several years the M&G, Sole, Basson and now Nic Dawes (the current Editor of the M&G) have harassed and continue to harass and victimise Gumede for no apparent reason. Gumede believes that the conduct of Basson, Sole, Dawes and the M&G is primarily motivated by a personal vendetta against Gumede since Gumede has won 3 cases against them and they were forced to publish apologies. They are using their opportunities and abilities as journalists to carry out their vendetta.

In their latest attempt to revive the allegations, Basson and Sole have approached persons over the last two and a half months including Mr Tebogo Khaas and Mr Nhlanhla Mhlongo (former employees of Guma), for information that could be damaging about Gumede. In some instances certain persons have been threatened and intimidated for information.

Mhlongo was interviewed at his home in Durban by Sole on 18 August 2010. It is reported that Mhlongo explained to Sole that he does not know of any criminal activity by Gumede. Sole is reported to have been asked by Mhlongo why he and the M&G are pursuing Gumede after so many years and he responded that Gumede has embarrassed and caused harm to the M&G that has affected their funders and the newly established AmaBhungane as a result of the apologies ordered by the Ombudsman and the Appeals Panel. We believe Dawes is embarrassed, angry and looking for negative news on Gumede.

We are aware that Basson e-mailed Khaas, a former Guma employee, a list of 16 questions and also emailed Telkom about Guma and Gumede. Surprisingly most of the questions deal with evidence

embodied in the transcript of the same inquiry referred to earlier where Telkom staff members testified. Khaas was briefly employed at ACT prior to its liquidation during 2001. Nine years later Sole and Basson are still scratching around to find some disgruntled individual to say something negative about Gumede so that they can publish offensive articles to vindicate themselves.

It is clear from these questions that this is a further fishing expedition if not a witch-hunt by Basson, Sole, Dawes and the M&G who continue to harass and victimize Gumede. The M&G, Basson, Sole and Dawes, in their desperation and possibly still in cahoots with Sterenborg are attempting to rehash Sterenborg's allegations against Gumede. The police and the National Prosecuting Authority have on three separate occasions rejected these allegations and declined to prosecute without even questioning Gumede or bringing the complaint or investigation to his attention.

Should the M&G, Sole, Dawes and Basson have new criminal related allegations, they should respect the legal process and lay criminal charges with the SAPS as citizens of the Republic. The M&G should stop behaving like an extension of the Police or NPA. The M&G has no right to threaten anybody with criminal charges in exchange for information, as they have done with some of the people whom they are pressuring to provide quotable material for yet another groundless story aimed at damaging Gumede's reputation. Major newspapers like the Sunday Times, Business Day, the Star, etc have printed front page apologies when they were found to be in the wrong and have not followed this with the vindictive campaign against the complainants, yet the M&G's position is not one to eat humble pie and now finds fault with the Ombudsman's decisions and wants to prove the Ombudsman wrong. This creates the impression that the M&G believes that it is the only custodian of investigative newspaper and that no one, including the Ombudsman, is above it.

The current victimisation of Gumede is happening at the same time that the media, including the M&G, wants to demonstrate the fairness of the Ombudsman process and the freedom of the press. What about Gumede's constitutional rights? Gumede has followed the due process of self regulatory to the letter, yet the M&G as a member of the Press Council and SANEF has with impunity undermined and made a farce of the Press Council and its self regulatory process.

Gumede has always supported free press but believes that to the M&G, the concept of free press means that it is above our country's constitution as well as that of self regulation.

Because of the disdain for the self-regulatory process shown by the editor and journalists of the M&G, Gumede and his businesses are offered no protection by the current system. As a result, Gumede now fully understands the proposal for a Media Appeals Tribunal to offer victims like him some redress.

Attached are some copies of the payments made to Sole by Sterenborg, the accuser and source of Sole/M&G negative articles about Gumede.