

## **CP Nel Museum Board of Trustees vs Die Hoorn**

**August 31 2021**

**Finding: Complaint 8841**

**Date of publication:** February 11 2021

**Headline:** *Museum se regsoptrede teen huurder van Infosentrum glo gestaak na minister Oudtshoorn besoek*

**Author:** Liesel le Roux

### **Particulars**

This finding is based on a written complaint by Ms Onica Xakaxa on behalf of the CP Nel Museum Board of Trustees, with supporting documents provided by Museum manager Mr Moses Mthethwa; a written reply by Ms Liesel le Roux, editor of *Die Hoorn*; and a written response to the newspaper's reply by Ms Xakaxa on behalf of the Board of Trustees.

### **Complaint**

The CP Nel Museum Board of Trustees submits that the article transgresses the following clauses in **Section 1** of the Press Code:

*"The media shall:*

*1.1 take care to report news truthfully, accurately and fairly;*

*1.2 present news in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarization;*

*1.8 seek, if practicable, the views of the subject of critical reportage in advance of publication, except when they might be prevented from reporting, or evidence destroyed, or sources intimidated. Such a subject should be afforded reasonable time to respond; if unable to obtain comment, this shall be stated."*

### **1. Summary of text**

1.1. The article is based on a visit to Oudtshoorn by Western Cape Cultural Affairs and Sport Minister Anroux Marais.

1.1.1. It reported that the provincial Minister was in town, among other things ("onder meer"), to try to mediate a solution to attempts by the CP Nel Museum's Board of Trustees to evict its three tenants: the Oudtshoorn tourism bureau, Agri Klein Karoo and the Oudtshoorn business chamber.

1.1.2. The newspaper reports that, after the Minister's visit, it believes ("na verneem word") the Board stopped ("gestaak") legal action to remove the tenants from the premises they rent from the Museum.

1.1.3. The premises are owned by the Municipality, which has reportedly rented it to the Western Cape government since the 1970s to accommodate the Museum ("vir die doeleindes van die museum").

1.2. Oudtshoorn Mayor Chris Macpherson confirmed to the newspaper that he discussed the Board's legal action against the three tenants with the Minister, and referred the newspaper to her for further information.

1.2.1. The newspaper addressed an enquiry to the Minister's spokesperson, but did not receive any response before deadline.

1.3. It further reported that the Board obtained an eviction order against the three tenants from the High Court after the Board initially only wanted to increase their rental. A lengthy legal process then ensued over the matter for more than two years.

1.3.1. According to the report, Oudtshoorn business chamber chairperson Jaco Vorster says it also believes the Board's legal action was stopped, but said the intervention came too late and followed years of requests to the Municipality for support and for a discussion with the Minister over the Board's action.

1.3.2. The business chamber and Agri Klein Karoo reportedly decided on January 28 to vacate the premises and gave notice, while Oudtshoorn Tourism chairperson Tammy Moulton told the newspaper it would remain on the premises as it meets requirements which are important to tourism.

## **2. Arguments**

### **CP Nel Museum Board of Trustees**

2.1. The Board claims that the article "lacks facts", damages the name of the Museum and is misleading, in breach of clauses 1.1 and 1.2 of the Press Code.

2.1.1. Firstly, it submits that the Board did not obtain a court order to evict the three tenants.

2.1.2. According to the Board, it accepted a proposal by the tenants to settle the matter out of court.

2.2. Secondly, the Board denies that it stopped its legal action ("regsopptrede") against the three tenants after the Minister's visit.

2.2.1. It argues that the reference to “na verneem word” in the article suggests that the reporter was not sure whether or not the Board’s legal action against the tenants was indeed stopped, and submits that “the process was never stopped at all”.

2.2.2. It says that, when one of the three tenants refused to vacate the premises, the Board’s attorney filed an order with the court to compel it to do so.

2.3. Thirdly, the Board submits that the Museum is a legal entity in its own right.

2.3.1. However, despite this, the Board says it was not approached by the newspaper for comment.

2.4. Fourthly, the Board submits that the Museum is a provincial institution, while the Municipality is a local tier of government.

2.4.1. However, according to the Board, the article wrongly assumes that the Museum is accountable to the Municipality.

2.4.2. The Board objects to the Mayor’s discussion of the matter with the provincial Minister, and regards this as an attempt by the Mayor to interfere politically in another sphere of government.

2.4.3. It further questions how the provincial Minister could investigate the Museum without any knowledge of the matter and says that, if that was indeed the case, the Board was not aware of such an investigation.

2.5. Fifthly, the Board notes that the three tenants were tenants of the Museum, and not the Oudtshoorn municipality. The Board therefore contends that comment was required from the Museum, and not from the Municipality.

2.5.1. However, the Board submits that it was not contacted for comment, in breach of clause 1.8 of the Press Code, and despite the fact that “all other parties involved” were consulted.

2.6. In conclusion, the Board contends that the inaccuracies and material omissions in the article damage the name of the Museum and mislead the public.

2.6.1. As a result, the Board requests a retraction of the article and an apology.

### **Die Hoorn**

2.7. Regarding an alleged breach of clause 1.8, the newspaper submits that it approached the Western Cape Department of Cultural Affairs and Sport for comment in view of the fact that it has been renting the premises in question from the Municipality since the mid-1970s.

2.7.1. The newspaper also says it asked the Mayor at a press conference on February 1 2021 for clarity about who was responsible for decision-making with regard to the rental of the premises.

2.7.2. The Mayor referred the newspaper to the provincial Minister of Cultural Affairs and Sport and to the head of the Department of Cultural Affairs and Sport, Herman van der Westhuizen.

2.7.3. The newspaper approached Van der Westhuizen for comment on February 9 and 23 2021, but did not receive any response. It also submitted an enquiry to Department spokesperson Stacey McLean on February 9 2021, but was informed that she was on leave and advised to approach Van der Westhuizen for comment.

2.7.4. The newspaper adds that it usually contacts departmental spokespersons with regard to enquiries concerning provincial government departments, and not local officials.

2.7.5. The newspaper further submits that the Minister and Department are still involved in the dispute about the lease of the building, which indicates that the Minister is not leaving decision-making on the matter to the Board of Trustees.

2.7.6. McLean also subsequently told the newspaper that the Minister's visit in March was about the rental of the building, and that a follow-up meeting would be held in May.

2.8. With regard to alleged breaches of clauses 1.1 and 1.2 of the Press Code, the newspaper repeats its submission that it did not receive timeous responses from the Department of Cultural Affairs and Sport to its enquiries (as described under 2.7.3).

2.8.1. As a result, the newspaper submitted its article to the Mayor to verify its accuracy, and he was satisfied that the information was correct.

2.9. The newspaper further says it fails to understand how the Board arrives at the conclusion that the report assumes that the Museum is accountable to the municipality (it states that the one is merely renting premises from another) or that the Mayor interfered politically.

### **Further arguments**

2.10. In its reply to *Die Hoorn*, the Board again states that it is a legal entity in its own right, and not an auxiliary structure under the office of the provincial Minister.

2.10.1. It provides a copy of Museums Ordinance 8 of 1975 to confirm that it is "capable in law ... of entering into contracts and generally of doing or performing such acts and things as bodies corporate may by law do and perform".

2.10.2. However, even though it is a legal entity in its own right, the Board says it was not approached for comment by the newspaper.

2.11. The Board further points out that the premises in question were leased to the Board, and not to the Department of Cultural Affairs and Sport.

2.11.1. In support of this claim, it provides a copy of the memorandum of agreement signed between the Museum's Board of Trustees and the Municipality on August 16 1973.

2.11.2. The Board submits that the three tenants were therefore tenants of the Museum. As such, it contends that the newspaper was obliged to seek comment from the Board, and not from the Municipality.

2.12. The Board subsequently again rejected the Public Advocate's proposal of a follow-up article and reaffirmed its request for the original article to be retracted because it is "one sided and lack(s) facts".

### **3. Analysis**

3.1. The introductory paragraph of the article states that the newspaper believes the Board stopped its legal action to evict its three tenants after the Minister's visit to Oudtshoorn.

3.1.1. However, the Board provided correspondence from its attorney to show that this is incorrect, and that in fact it proceeded with legal action against the Oudtshoorn tourism bureau when it refused to vacate the premises.

3.2. The article also incorrectly reports that the Board obtained an eviction order against the three tenants.

3.2.1. Although the Board did initially apply to the High Court for an eviction order, two of the three tenants proposed an out of court settlement before the order was obtained, and agreed to vacate the premises.

3.2.2. As noted in points 2.2.2 and 3.1.1, legal action is still proceeding against the Oudtshoorn tourism bureau.

3.3. The article incorrectly reports that the Municipality rented the premises in question to the Western Cape government to accommodate the Museum.

3.3.1. The premises are, in fact, rented by the Municipality to the Board since 1973.

3.4. The newspaper report carries comments from the Mayor. As head of the council that runs the Oudtshoorn municipality which owns the building in question, the Mayor was entitled to express his views on the matter.

3.4.1. However, by the same token, the Museum – which rents the building from the Municipality – was entitled to express its views on the matter as well.

3.4.2. Furthermore, in view of the fact that the lease agreements were between the Museum and the tenants, there was a legitimate expectation by the Board that the newspaper would seek its views on the matter.

3.4.3. The newspaper report also carries comments from Oudtshoorn business chamber chairperson Jaco Vorster and Oudtshoorn Tourism chairperson Tammy Moul. As parties involved in the dispute, they were entitled to express their views.

3.4.4. However, this right applies equally to the Museum as one of the parties in the dispute. However, the Board was not similarly granted an opportunity by the newspaper to express its views.

3.4.5. In the absence of any comment in the article from the Museum, the newspaper therefore failed to reflect the views of “the subject of critical reportage”, as required by clause 1.8 of the Press Code.

3.5. The jurisdiction of the office of the Press Ombud is confined to breaches of the Press Code. As such, it is unable to make any pronouncement on the Board’s complaint about the Mayor’s alleged interference in a matter affecting a provincial institution such as the Museum.

#### **4. Finding**

The Board’s complaint that the article is in breach of **clause 1.2** is **dismissed**. The issues raised in this part of its complaint are dealt with more appropriately as breaches of the provisions of clauses 1.1 and 1.8.

The Board’s complaint that the article is in breach of **clause 1.1** is **upheld** in three respects.

Firstly, the article incorrectly reports that the Board stopped its legal action to remove its tenants from the premises they rent from the Museum.

Secondly, the article incorrectly reports that the Board obtained an eviction order against the tenants.

Thirdly, the article incorrectly reports that the Municipality rented the premises in question to the Western Cape government to accommodate the Museum.

The Board’s complaint that the article is in breach of **clause 1.8** is also **upheld**. The article does not contain any comment from the Museum’s Board of Trustees.

The newspaper is required to apologise to the Board of Trustees for these breaches of the Press Code identified. The headline should contain the word “**apology**”, and the text should:

- be published at the earliest opportunity after the time for an application for leave to appeal has lapsed or, in the event of such an application, after that ruling;
- refer to the complaint that was lodged with this office;
- end with the sentence, “Visit [www.presscouncil.org.za](http://www.presscouncil.org.za) for the full finding”;
- be published with the logo of the Press Council ; and
- be approved by the Deputy Press Ombudsman.

## **5. Appeal**

The Complaints Procedures lay down that, within seven working days of receipt of this decision, either party may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Bernard Ngoepe, fully setting out the grounds of appeal. He can be contacted at [Khanyim@ombudsman.org.za](mailto:Khanyim@ombudsman.org.za)

*Tyrone August*

*Deputy Press Ombudsman*

*August 31 2021*