

## **DA and John Steenhuisen vs Sunday Times and TimesLive**

**October 28 2021**

**Finding: Complaint 9305**

**Date of publication:** October 10 2021

**Headline:** *Phoenix posters a symptom of diversity mismanaged*

**Author:** Makhudu Sefara

### **Particulars**

This finding is based on a written complaint by Ms Elzanne Jonker of Minde, Shapiro & Smith Inc on behalf of the Democratic Alliance (DA) and its leader, Mr John Steenhuisen; a media report and a television interview in support of the complaint; a written reply to the complaint by Ms Susan Smuts on behalf of *Sunday Times* and *TimesLive*; and a written response to the reply of the publications by Ms Jonker.

### **Complaint**

The DA 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;*

*1.3 present only what may reasonably be true as fact; opinions, allegations, rumours or suppositions shall be presented clearly as such.”*

The DA also submits that the article transgresses **Section 7** of the Press Code on “Protected Comment”:

*“7.1 The media shall be entitled to comment upon or criticise any actions or events of public interest; and*

*7.2 Comment or criticism is protected even if it is extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it is without malice, is on a matter of public interest, has taken fair account of all material facts that are either true or reasonably true, and is presented in a manner that it appears clearly to be comment.”*

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

1.1. Sefara’s article refers to two studies on what is described as diversity management, and identifies what he regards as examples of symptoms of how diversity has been mismanaged in South Africa.

1.2. Among the examples he includes are what he describes as the infamous posters put up by the DA in Phoenix, Durban, in the wake of various incidents of violence which took place in the area during July.

1.3. The article also cites other examples of such symptoms of diversity mismanagement, among them the Clicks/TRESemme advertising campaign around certain hair products last year, an advertisement for Dove soap and an H&M advertisement for children's clothing.

1.4. Sefara goes on to argue that individuals and once-off "diversity training" are not sufficient to change an organisation's culture, and calls for strict legal enforcement and consumer action to bring about "exemplary corporate citizenship".

1.5. He further suggests that "racist" political parties that seek votes from black voters must be punished as well.

1.6. In conclusion, Sefara argues that the root causes of the symptoms of diversity mismanagement need to be addressed in order to ensure that South Africa achieves its full potential.

## **2. Arguments**

### **Democratic Alliance/John Steenhuisen**

2.1. The complainants take issue, in particular, with the following sentence in Sefara's article: *"The point here is not to write about DA Leader John Steenhuisen, a legend of a mampara who told the media this week that the vigilante killers of Phoenix, Durban, will always be his heroes and he will not apologise for idolising them."*

2.1.1. They contend that this sentence is untrue and contravenes Clauses 1.1, 1.2, 1.3 and Section 7 of the Press Code.

2.2. The complainants submit that Steenhuisen spoke out both against vigilantes and looters, and refer to a media interview on Newzroom Afrika in support of this claim.

2.2.1. They quote the following statement from the interview: *"What happened in Phoenix was unacceptable. Any crime and criminality that resulted from either vigilantism or looting is condemned in the strongest possible terms ... Never once have I said or praised anybody involved in any crime or criminality. I've been very, very clear, right from the beginning – anyone involved in crime, anyone involved in vigilantism, anyone involved in looting, is part of the problem."*

2.2.2. In addition, they provide the following quote from the interview: *"I am never going to apologise for calling ordinary South Africans who stand up for law and order, who protect the rule of law, and who are on the side of right – I'm never going to apologise for calling them heroes. They are heroes whether they be Black, White, Indian or Coloured."*

2.2.3. They therefore argue that Steenhuisen drew a distinction between those who used lawful means to protect themselves, their property and their communities, and those who employed violence and criminality.

2.2.4. Accordingly, they submit that it is not clear how Steenhuisen's comments can be interpreted to mean that "*the vigilante killers of Phoenix, Durban, will always be his heroes and he will not apologise for idolising them*".

2.3. The complainants further state that other publications correctly understood Steenhuisen's support for lawful efforts to defend property and communities as well as his condemnation of vigilante killings.

2.3.1. As an example, they provide a copy of a news article by *The Citizen* which, they submit, "accurately report[s] his comments".

2.4. Lastly, the complainants state that it is not true that the DA apologised for the comments that Steenhuisen did actually make.

2.4.1. They therefore request that *Sunday Times* and *TimesLive* be reprimanded, and that a retraction, apology and findings of the Press Ombud be published as the lead story on the front page of the publications or, alternatively, on a page that is prominent and easily viewed.

2.4.2. They further request that the apology be shared prominently on the social media accounts of *Sunday Times* and *TimesLive* as well as on the social media accounts of the Editor of the publications.

### **Sunday Times/TimesLive**

2.5. The respondents point out that Sefara's article refers to an impromptu interview with Steenhuisen by Newzroom Afrika during a DA march against water shortages on October 6. (This is the same interview which the complainants cite.)

2.5.1. They state that it is common cause that Steenhuisen did not say during the interview that the vigilante killers of Phoenix will always be his heroes and that he will not apologise for idolising them.

2.5.2. They further submit that, if the article was presented as a news story on the interview, it would have indeed transgressed the Press Code for failing to report truthfully, accurately and fairly.

2.5.3. However, they argue, Sefara's article was not a news report and could not have been understood as such. They state that his article was an opinion piece and that the words complained of were "not intended or understood as being the truth".

2.5.4. They contend that "the ordinary reader" would have understood the words to mean that Sefara expressed the opinion that what Steenhuisen told the media "*in effect* amounts to him regarding the Phoenix vigilante killers as heroes, for which he will not apologise" (italics in the original response).

2.5.5. The respondents further submit that, even though Sefara's opinion that Steenhuisen's attempts at justifying the poster amount to hero-worshipping and idolising the vigilante killers of Phoenix may be regarded by some as "extreme, unjust, unbalanced, exaggerated and prejudiced", such views comply with the Press Code.

2.5.6. They submit that the complaint should therefore be dismissed.

2.6. In support of this contention, the respondents provide a context to Sefara's opinion and outline various events that took place in Phoenix on July 20 which culminated in the deaths of at least 36 people, and refer to media articles by *Daily Maverick* and News24.

2.7. They also describe the controversy that followed the erection of the DA election posters in Phoenix on October 4 which read: "*The ANC called you racists*" and "*The DA calls you heroes*".

2.8. The respondents go on to describe Steenhuisen's interview with Newzroom Afrika in some detail. In their view, the interview shows "how insulting the poster was to many and how, by arrogantly defending it, Steenhuisen caused much offence".

2.8.1. They note that this interview was widely reported on, and that it was in this context that Sefara's column was published a few days later.

2.9. The respondents add that the column was not about Steenhuisen or the posters, and that the DA leader's defence of the posters was cited in a much wider context, namely the mismanagement of diversity.

2.9.1. They further state that the words in Sefara's column that Steenhuisen "*told the media this week that the vigilante killers of Phoenix, Durban, will always be his heroes and he will not apologise for idolising them*" were not intended to be a factual account of the interview.

2.9.2 They submit that readers knew this and that, if the words in question were indeed what Steenhuisen said in the interview, this would have been widely reported.

2.10. The respondents submit that the crux of the matter is that Steenhuisen defended offensive posters, "which failed to distinguish between vigilante killers and law-abiding citizens, ... which fanned racial tensions, ... which the DA knew by implication praised murderers".

2.10.1. They further note that, even though the DA withdrew the posters after a public outcry, Steenhuisen himself did not apologise, and simply called the posters an "unhelpful distraction" to the party's election message of service delivery.

2.11. In addition, the respondents offer a legal framework within which to view Sefara's comment.

2.11.1. They submit that it was "an honest opinion on a matter of public interest", in accordance with the Press Code.

2.11.2. Furthermore, they note that it was expressed in the context of political debate in the run-up to the local government elections on November 1, and submit that the courts have repeatedly recognised that political debate is robust, especially on the eve of an election.

2.12. The respondents also refer to a judgment by the Constitutional Court involving the DA during the 2014 general elections, and submit that the court addressed the distinction between fact and comment – "the exact issue facing the Press Council here".

2.12.1. They contend that the statement in Sefara's article that Steenhuisen told the media that he idolises vigilante killers is "so unlikely that it was clearly nothing other than an opinion", and that it was presented as such to readers.

2.12.2. They add that if there were any doubts by readers about Sefara's comment, they were immediately referred to a source – in other words, the Newzroom Afrika interview – to check for themselves.

2.12.3. They further assert that, if the Press Ombud still held any doubts about how the comment would have been understood, the fact that it was expressed in the context of a forthcoming election was "decisive".

2.13. In conclusion, the respondents contend that a finding that Sefara's comment was "an untrue factual statement ... would go against the grain of established law and precedent", and accordingly ask that the complaint be dismissed.

### **Further arguments**

2.14. In response to the submission of the respondents, the complainants submit that the publications are trying "to defend the indefensible".

2.14.1. They submit that the respondents published an article which asserts that Steenhuisen "said something that he did not really say".

2.14.2. They further submit that the publications admit that a literal interpretation of the statement in question would be false and would violate the Press Code.

2.15. The complainants go on to argue that the publications attempt to defend the statement on the grounds that it constitutes protected comment.

2.15.1. They submit that, in terms of the Press Code and the law of defamation, a defence of protected comment can only be justified when a statement is indeed a comment (and not a statement of fact), and when the comment is fair – "one that a fair person, however extreme, might honestly hold".

2.15.2. They contend that Sefara's statement is not a comment but a statement of fact, and note that it claims that Steenhuisen "*told the media ... that the vigilante killers of Phoenix, Durban, will always be his heroes and he will not apologise for idolising them*".

2.15.3. The complainants further submit that, unlike a comment, this statement does not reflect a value judgment, but is instead "a fact that can be proven or disproven".

2.16. The complainants then address each of the three arguments offered by the publications on why the statement in question is a comment.

2.16.1. Firstly, they submit that the publication of Sefara's article in the opinion and analysis section of the newspaper does not transform a factual statement into an opinion.

2.16.2. Secondly, they reject the argument that the statement in question is an opinion because it refers to an external source, namely Steenhuisen's interview with Newzroom

Afrika. They contend that the publications “merely asserted that he [Steenhuisen] said something that he did not”.

2.16.3. Thirdly, they refer to the respondents’ argument that “[t]he statement that Steenhuisen told the media he idolises vigilante killers is so unlikely that it was clearly nothing other than an opinion”, and submit that something that is patently false does not make it an opinion.

2.16.4. They further contend that, even if it is assumed for the sake of argument that Sefara’s statement is a comment, it would still have to be fair. They submit that this requirement is not met, and point out that the publications admit that the statement is false.

2.16.5. In fact, they submit, the publications admit that the statement is so obviously false that no-one could have taken it seriously. The complainants argue that, if this is the case, Sefara’s statement is “not an opinion that a fair person could honestly hold”.

2.16.6. They submit that Steenhuisen explicitly stated in the Newzroom Afrika interview that vigilantes were not heroes and that he condemned all criminality, whether such acts were committed by vigilantes or looters.

2.17. The complainants also refer to what they regard as a number of red herrings in the response of the publications, including criticism of the DA on the Phoenix poster controversy and attacks on Steenhuisen’s character.

2.17.1. The complainants believe these arguments have nothing to do with whether Sefara’s statement transgresses the Press Code, and contend that the key issue is whether the statement in question is true or not.

2.17.2. They also dismiss the argument that Sefara’s statement must be permitted as part of robust political debate during elections in view of the fact that it is “a naked falsehood”.

2.18. In conclusion, the respondents request a retraction and a front-page apology to be published in *Sunday Times* before the local government elections on November 1.

### **3. Analysis**

3.1. The following sentence in Sefara’s article is at the centre of the complaint by the DA and Steenhuisen: *“The point here is not to write about DA Leader John Steenhuisen, a legend of a mampara who told the media this week that the vigilante killers of Phoenix, Durban, will always be his heroes and he will not apologise for idolising them.”*

3.1.1. The complainants deny that Steenhuisen made such a statement to the media, while the respondents maintain that the sentence is protected comment. These are the two key issues in this complaint: whether this sentence is true, and whether it constitutes protected comment.

3.2. The complainants and the respondents both refer to the same interview with Steenhuisen on Newzroom Afrika to support their respective arguments.

3.2.1. However, it is clear from this interview that Steenhuisen did not tell the media that “*the vigilante killers of Phoenix, Durban, will always be his heroes*”, as Sefara states in his article.

3.2.2. On the contrary, Steenhuisen expressly criticised vigilantes, as the following quote from the Newzroom Afrika interview illustrates: “*I’ve been very, very clear, right from the beginning – anyone involved in crime, anyone involved in vigilantism, anyone involved in looting, is part of the problem.*”

3.2.3. He went on to describe as heroes those “*ordinary South Africans who stand up for law and order, who protect the rule of law, and who are on the side of right*”.

3.3. The publications note that it is common cause that Steenhuisen did not say in the Newzroom Afrika interview that the vigilante killers will always be his heroes and that he will not apologise for idolising them.

3.3.1. They acknowledge that Sefara’s article would have transgressed the Press Code for failing to report accurately and truthfully if it was presented as a news story. However, they emphasise that the article was an opinion piece.

3.3.2. They believe ordinary readers would have understood that Sefara’s statement was “not intended or understood as being the truth”, but that it was an interpretation of what Steenhuisen said.

3.3.3. However, the article explicitly states that Steenhuisen “*told the media*” that the vigilante killers will always be his heroes and that he will not apologise for idolising them. This is presented as an unambiguous statement of fact; it is not presented as an interpretation of fact (as required by **Clause 1.3** of the Press Code).

3.3.4. The next sentence in the paragraph also incorrectly states that the DA apologised for Steenhuisen’s comments on the Phoenix posters when it did not, in fact, do so.

3.4. The publications further argue that Sefara’s statement is “so unlikely that it was clearly nothing other than an opinion”. This is a peculiar defence: it is an attempt to present an untruthful statement as an opinion.

3.4.1. If readers are still unsure about whether Steenhuisen indeed uttered those words, the publications advise them in their response to view the Newzroom Afrika interview to check for themselves.

3.4.2. There is little merit in this defence: firstly, there is no specific reference to Newzroom Afrika in Sefara’s article and, secondly, the publications place an obligation on readers to establish what is fact and what is opinion when it is surely the responsibility of the author to make this distinction clear.

3.5. The publications further argue that Sefara's statement must be viewed within the context of political debate on the eve of the upcoming local government elections.

3.5.1. This is certainly a valid point. However, it is perhaps even more vital during an election period for readers who are potential voters to be able to distinguish clearly between information which is based on fact and information which is not.

3.5.2. Potential voters need to be empowered to make informed decisions about their choices at the ballot box. Providing potential voters with information, and then not clearly indicating that it is not a statement of fact but rather an interpretation of a fact, is misleading.

3.6. The publications maintain that the crux of the matter is that Steenhuisen defended offensive posters, and that he did not apologise even when the DA withdrew the posters after a public outcry.

3.6.1. Steenhuisen's defence of the posters may well cause discomfort, and the absence of an apology from him may continue to invite criticism. But such issues are the domain of politics, and do not fall within the purview of the Press Council.

3.7. The argument of the publications that Sefara's statement is protected comment does not pass muster. An erroneous statement cannot be passed off as protected comment, even if it appears within the context of an opinion piece.

3.7.1. Furthermore, in order to meet the requirement of protected comment, such comment must – among other things – take “fair account of all material facts that are either true or reasonably true”, as **Clause 7.2** of the Press Code clearly and emphatically states.

3.7.2 Thus, even though protected comment is vigorously supported by Section 7 of the Press Code, it must be based on well-founded information. By failing to take fair account of all true or reasonably true material facts, the statement in Sefara's article does not qualify to be viewed as protected comment.<sup>1</sup>

3.8. Both parties refer to certain court cases in support of their arguments. As the basic principles which underpin these court cases are essentially the same as those reflected in the Press Code, this ruling is confined to the provisions of the Press Code.

#### **4. Finding**

The complaint that Sefara's statement is in breach of **Clause 1.1** and **Clause 1.2** of the Press Code are **dismissed** in view of the fact that these clauses relate specifically to news, whereas the statement in question is contained in an opinion piece and is not part of a news report.

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<sup>1</sup> As *Manchester Guardian* editor CP Scott noted in an essay a century ago, “facts are sacred”. (See <https://www.theguardian.com/sustainability/cp-scott-centenary-essay>.)

The complaint that the statement is in breach of **Clause 1.3** is **upheld** for the reasons identified in points 3.3.3 and 3.3.4 of my “Analysis”.

The complaint that the statement is in breach of **clause 7.2** is also **upheld**. The reasons are identified in points 3.7 to 3.7.2 of my “Analysis”.

The newspaper is directed to apologise in *Sunday Times*, *TimesLive* and also on their social media platforms to the DA and to Steenhuisen for these transgressions of the Press Code, which are deemed Tier 2 offences in the Press Council’s “Hierarchy of Sanctions”.

This complaint was lodged in the run-up to the local government elections to be held on November 1. In this regard, I refer to section 1.5 of the Press Council’s Complaints Procedures:

*“Recognising the importance of democratic elections at national, provincial and local levels of government, the Press Council will give top priority to finding speedy resolutions to complaints related to those elections when they are being held to secure free and fair elections.”*

After the complaint was received, there was initially a slight delay due to the illness of the respondents’ legal adviser. However, this matter has been adjudicated within three days after the respondent’s response to the complaint was received. I thank the complainants for their quick response to the reply of the respondents.

I also refer to the following sections of the Complaints Procedures:

*“7.2. If a finding is made against a publication that has voluntarily become subject to the jurisdiction of the Ombud, the Ombud, the Adjudication Panel, or the Appeals Panel, as the case may be, may make any one or more of the following orders against the proprietor of the publication: ...*

*“7.2.4. Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Ombud, the Adjudication Panel, or the Appeals Panel.”*

In light of above, I make the following order:

The headline of the apology should contain the words “**apology**”, “**DA**” and “**Steenhuisen**”, and the text should:

- be published online by Saturday, 30 October 2021, and in print on Sunday, 31 October 2021;
- 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 not later than 15:00, Friday, 29 October 2021.

## 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)

However, again in light of the elections on November 1, I further order that were the respondents to appeal this finding, they have to publish the following online by Saturday, 30 October 2021, and in print on Sunday, 31 October 2021:

*Sunday Times* and *TimesLive* published an opinion piece by Makhudu Sefara, “*Phoenix posters a symptom of diversity mismanaged*”, on 10 October 2021. The DA and its leader John Steenhuisen lodged a complaint with the Press Council.

The following sentence in Sefara’s article is at the centre of the complaint: “*The point here is not to write about DA Leader John Steenhuisen, a legend of a mampara who told the media this week that the vigilante killers of Phoenix, Durban, will always be his heroes and he will not apologise for idolising them.*”

The complainants deny that Steenhuisen made such a statement to the media, while *Sunday Times* and *TimesLive* maintain that the sentence is protected comment.

Deputy Press Ombud Tyrone August found in favour of the DA and Steenhuisen, and ordered that *Sunday Times* and *TimeLive* should publish an apology. Visit [www.presscouncil.org.za](http://www.presscouncil.org.za) for the full finding.

However, in accordance with the Press Council’s Complaints Procedures, *Sunday Times* and *TimesLive* will be applying for leave to appeal the Deputy Press Ombud’s finding.

*Tyrone August*  
*Deputy Press Ombudsman*  
*28 October 2021*