

Parliament vs. Daily Maverick

Ruling by the Press Ombud
19 June 2017

This ruling is based on the written submissions of Mr Moloto Mothapo, spokesperson: Parliamentary Communication Services, on behalf of the SA Parliament, and those of Marianne Merten of the Daily Maverick (online) publication, as well as on a meeting I had with the parties in Cape Town on June 15. Mr Manelisi Wolela, section manager of media and communication, also attended the meeting.

Parliament is complaining about an article in the Daily Maverick of 22 May 2017, headlined *Securocracy, Parliament edition: Where the ceilings have eyes*.

Complaint

The nub of Parliament's complaint is that Daily Maverick did not ask it for comment on some issues where the journalist was wrong or unfair (details below).

The text

The kicker to the article, penned by Marianne Merten, read, "Cameras amid the National Assembly light fittings trained on MPs. Police detectives contravening the law, and sanctity of Parliament, in pursuit of a minister's complaint over a tweet. And another round of rumours on the parliamentary grapevine over whether or not Parliament's top administrator really has the security clearance for the job. Beneath the veneer of the people's Parliament, the institution appears to be unravelling."

Merten wrote that four police investigators from Gauteng arrived unannounced at Parliament, to take a warning statement from DA Chief Whip John Steenhuisen over his 18 March tweet, which read, "My money's on [State Security Minister David] Mahlobo and the kak-handed SSA [State Security Agency]. Signal jammer, imaginary social media villains and inept break-ins. Intimidation of the judiciary."

The journalist commented that, by simply turning up, the SAPS officials contravened the law requiring visitors to obtain the explicit permission of the presiding officers before entering Parliament.

She also reported that Steenhuisen had earlier complained to the Secretary of the National Assembly, Masibulele Xaso, about cameras directly above his parliamentary seat – "there are a number of these cameras and not only above opposition benches," she wrote. "There was surprise about these cameras, and uncertainty exactly what these were filming as sittings of the

House are captured by official cameras to broadcast proceedings. Steenhuisen said an ‘official investigation’ into these cameras was now under way.”

The arguments

The alleged lack of a right of reply permeates the whole complaint. I shall, however, address this matter separately at the end of my adjudication.

Four allegations

Parliament ‘complicit’

Mothapo says the article insinuated that Parliament had been complicit in the alleged violation of the law by members of the SAPS, who reportedly entered its precinct without authorization from the presiding officers to “take a warning statement” from DA Chief Whip John Steenhuisen.

Merten denies that her article either expressly stated, or implied, that Parliament had been “complicit” or in “collaboration in the act of the police” – in fact, the text stated that police “arrived unannounced” and “simply pitched up”.

Moreover, she says, she gave context to this matter by explaining the applicable law and the historical practice at Parliament. The story said, “But by simply pitching up, the SAPS officials contravened the 2004 Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act. Sections 4 and 5 of that law requires anyone, including the Sheriff of the Court, to obtain the explicit permission of the presiding officers before coming to Parliament.”

She notes that the complaint does not indicate that her account of events was incorrect.

Mothapo argues that while the article did not expressly state that Parliament was “complicit” in the actions of the police officers, it was indeed “implied” in the thrust of the report.

He says that the article alleged unlawful police presence on the Parliamentary precinct, which is under the control of the Speaker of the National Assembly and the Chairperson of the National Council of Provinces for the sake of Parliamentary security. “This is a critical reportage on Parliament and tarnishes the public image of the institution,” he concludes.

Analysis

The question is whether the article implied complicity by Parliament (as, indeed, it did not use that specific word).

The article twice stated that four police investigators from Gauteng had arrived “unannounced” at Parliament. This implies that Parliament could not have been “complicit”, as its officials cannot be complicit in something about which they have no knowledge.

Installing suspicious-looking cameras

After reporting that Steenhuisen had earlier complained about cameras directly above his parliamentary seat, Merten stated, “[there] are a number of these cameras and not only above opposition benches”.

Mothapo says this statement – as fact – that Parliament had installed suspicious-looking cameras on the ceiling above the seats of the opposition benches in the National Assembly Chamber (in addition to the “official” broadcast cameras) was false.

Merten argues that Steenhuisen, as the person who directly raised this concern and complaint, is a credible source. The article also reflected the chief whip’s statement that an official investigation into these cameras was under way (and not yet completed at the time of publication).

The journalist adds that Parliament itself, on May 24, publicly confirmed Steenhuisen’s official complaint, as well as the investigation and its outcome. She cites the following from Parliament’s statement in this regard: “The tiny ‘gadgets’ which form part of the design features on the National Assembly (NA) ceiling, just above the chairs of the presiding officer and certain sections of the Assembly benches, which ... Steenhuisen suspected were surveillance cameras, are in fact downlights... [He] had lodged a complaint with the Speaker’s Office regarding the presence of the ‘gadgets’ (downlights) on the ceiling, alleging they might be ‘hidden cameras’ installed to spy on the opposition.”

Mothapo asserts the journalist reported the existence of these “spy cameras”, which had been alleged by a single source, as fact. However, he argues, it was merely an allegation.

Analysis

The reasonable reader would have interpreted Merten’s statement that “there were a number of those cameras” in Parliament as a statement of fact – which was not reasonable at the time of publication as an investigation into the matter was still under way.

The outcome of the investigation also proved this account wrong, as indicated by Parliament’s subsequent statement.

At the meeting I asked Merten if the Daily Maverick had done a follow-up on this issue, as new information on the subject had come to light – to which she replied in the negative.

Frolick

The article reported that it seemed as if the bouncers “[may] no longer be able to travel with MPs on oversight visits. *Daily Maverick* understands an undertaking to end such travel was made by House Chairperson for Committees, Cedric Frolick...”

Mothapo calls the reference to Frolick “rumour-mongering”, with no basis in fact.

Merten responds that this statement was based on a “credible source with direct knowledge of this matter”. She says she did make an effort, albeit unsuccessful, to contact Frolick before publication. That is why the article avoided a categorical statement and instead stated, “*Daily Maverick* understands an undertaking to end such travels was made...” she adds.

Mothapo replies, “[Merten] seems to have concocted a narrative using unnamed sources to propagate the claim that Parliament is being securitised. This is disappointing for a journalist of her stature,” he remarks.

Analysis

The reference to Frolick may or may not have been “rumour-mongering”. I note, though, that Merten did not make this statement as fact and that she says this information was obtained from a credible source. Following my meeting with the parties, I am willing to accept her version on this issue.

‘Bouncers’

Parliament complains about Merten’s statement that Parliament had hired “bouncers” as chamber protection officers to evict unruly Members of Parliament. Labelling those people as such was denigrating, and it fed “into some political agenda to delegitimise them”, Mothapo argues, adding that the journalist ought to have referred to them by their correct titles.

Merten denies her article stated that Parliament had “hired” bouncers. She says these members of staff, whose official title was stated in the article, were described as follows: “most are ex- SAPS officials hastily recruited in mid-2015 as chamber support officials to evict unruly MPs” – a statement Mothapo does not dispute in his complaint, she says.

The journalist argues that the term “bouncer” is “overwhelmingly” used in the parliamentary precinct by both staff and politicians from across the party political spectrum to describe this category of parliamentary staff, even during sittings of the National Assembly. She adds, “The term bouncer (or so-called bouncer or white shirt) is regularly used to describe these staff in other media, unchallenged by Parliament to the best of my knowledge.”

She asserts that the term bouncer is not denigrating, but rather that it denotes someone whose job it is to remove people causing a disturbance.

Mothapo calls Merten's reply "unfortunate" – she denies her article stated that Parliament had hired bouncers, yet she explicitly wrote, "And it seems the bouncer – most are ex-SAPS officials hastily recruited mid-2015 as chamber support officials..."

He reiterates that "bouncer" is a demeaning term, intended to show Parliament's "honest and hardworking" chamber support officers in a bad light.

He says that, according to a dictionary, a bouncer is "a person employed by a nightclub or similar establishment to prevent troublemakers and other unwanted people entering or to eject them from the premises." Parliament, he argues, is not a nightclub or a similar establishment, hence no Parliament anywhere in the world refers to staff members performing similar duties in such a manner.

Mothapo argues that, in light of the fact that a social media campaign earlier this year encouraged violent attacks on these staff members for merely doing their job, Merten's labeling was "offensive and irresponsible". Journalists, he submits, have a duty to refer to individuals mentioned in their stories by using their official titles.

Analysis

The article referred five times to "bouncers", making the question whether Merten had stated that Parliament "hired" bouncers irrelevant.

I accept Mothapo's argument that "bouncers" are usually associated with nightclubs, that those members of staff provide a professional service, and that the word may have offensive intent.

However, I do not believe Daily Maverick's use of the word is of such a nature that it breached the Code of Ethics and Conduct. The mere fact that something is or may be offensive does not by itself constitute a breach of the Code.

Also, I accept "bouncer" to be in general colloquial use, that it is understood as such by Jane and Joe Public, and I do not consider it denigratory per definition.

Comments

Material issues

First, I am dealing with the four issues as detailed above – to establish what Merten should have ascertained and what not – after which I shall ask the question whether she complied with the Code or not.

Parliament 'complicit': As argued above, Parliament's top officials were not "complicit" in the allegedly unlawful entry of members of the SAPS into the institution's precinct. Therefore, I do not expect Merten to have asked Mothapo about Parliament being "complicit".

However, I do believe that Merten should have asked comment from the officials on the allegation that police members had unlawfully and unannounced entered the premises.

Let me glance at the reportage again:

- The headline announced “securocracy” at Parliament, “where the ceilings have eyes”;
- The kicker stated: “Cameras amid the National Assembly light fittings trained on MPs. Police detectives contravening the law, and sanctity of Parliament, in pursuit of a minister’s complaint over a tweet. And another round of rumours on the parliamentary grapevine over whether or not Parliament’s top administrator really has the security clearance for the job. Beneath the veneer of the people’s Parliament, the institution appears to be unravelling”; and
- The last sentence stated, “Institutions (within the context, clearly meaning Parliament) are eroded little by little.”

At the meeting, Mothapo argued that these statements had put Parliament on trial, that the connotation was negative, and that the institution’s image had been tarnished – which is why the institution should have had an opportunity to respond.

I agree with him – the citations above, and indeed the thrust of the article, made Parliament the subject of critical reportage, which obliged the journalist to give the institution a right of reply (see Section 1.8 of the Code). This means Merten should have asked Parliament for comment on the “eroding” of the institution due to its “securocratisation”.

Installing suspicious-looking cameras: The same argument about critical reportage is valid in this instance. Because Merten did, as fact, refer to the gadgets as “cameras” and “suspicious”, she should have obtained comment from Mothapo on this issue.

Frolick: I am satisfied that Merten did seek comment on Frolick’s alleged statement about the Secretary of Parliament’s security clearance; I also note that she did not report this as fact. Section 1.8 of the Code, however, requires journalists to report the fact that she was unable to obtain his comment – which she neglected to do.

‘Bouncers’: It is not realistic to believe that Merten was obliged to ask comment on an issue of colloquial word use.

No response from Parliament; not asked for comment

I am now turning to the gist of the complaint.

The article stated, “Parliament did not respond to requests for comment (and so the issue of Mgidlana’s security clearance remains unclear).”

Mothapo says although Merten claimed in her story that Parliament had not responded to her enquiries – in fact, “no inquiry relating to the above-mentioned allegations was forwarded to Parliament”.

Merten calls this a “misreading”, saying that this statement related directly to the status of Parliamentary Secretary Gengezi Mgidlana’s security clearance.

She adds that “on this matter” Parliament did not respond to several enquiries. She says she called Mothapo, but he did not accept the call – instead a text message was received reading, “Hi. I’m sorry can’t take your call at the moment. Please kindly sms for a quicker response. Regards, Moloto”. An SMS query regarding Mr Mgidlana’s security clearance was sent to Mr Mothapo at 9.38 a.m. followed up by an email to which Mr Mothapo was also alerted via SMS.

“While my records show delivery, there was no acknowledgement. A follow-up phone call, and voicemail, around lunch time the same day were not responded to. In response to another later follow-up SMS just before 5pm, Mr Mothapo replied, ‘Ok will have a look at them. What’s the deadline’. My response was ‘Urgent. That’s why I contacted you shortly after 9am today. Latest 10am Sunday’,” she submits.

She concludes, “I would like to re-iterate the public interest matters around Parliament raised in this article are sourced and attributed/referenced with due care and within context. Where this was not expressly possible, it is so indicated. There has been no intentional or negligent departure from the facts. I have taken the necessary care to report truthfully, accurately and fairly with due regard to context and facts.”

Mothapo replies that Merten sought a response on only one of the several allegations in her article – on the four allegations made against Parliament which constituted the overwhelming section of the report, she did not “bother to” seek its views. Referring *inter alia* to Merten’s opening statement that Parliament appeared to be unravelling, he argues that she should have asked the institution for comment as her reportage constituted critical reportage of the institution (see Section 1.8 of the Press Council’s Code for Ethics and Conduct).

He argues that Merten seeks to divorce the allegations from the thrust of the story (namely ‘securitisation’ of Parliament) and describes this as an “unfortunate attempt to mislead the Ombudsman”.

Analysis

At the meeting I asked Merten why she did not ask Parliament about the “cameras” and about the fact that four members of the Police allegedly entered the precinct unannounced and unlawfully – which added to the implication that the institution was being eroded.

She responded that:

- the facts about the police had not been in dispute;

- she did speak to Steenhuisen (the complainant regarding the “cameras”) about the gadgets;
- an investigation about the “cameras” had still been under way; and
- largely she reported these matters as allegations, which implied some sort of verification (or else she would not have reported those issues in the first place).

In this regard the journalist also retorted that:

- Parliament could have responded to her article after its publication; and
- a similar report in another newspaper was also published, but that Parliament did not complain about that article.

None of these reasons can weigh heavily enough, not even when considered together, to persuade me that she was not obliged to ask Parliament about these matters in particular:

- The absence of a dispute about the unlawful entry of police members is irrelevant – this reflected badly on Parliament, and the public had a right to know why and how this was possible in the first place;
- Speaking to Steenhuisen certainly was not enough – he was the complainant and could not speak on behalf of Parliament;
- The fact that an investigation was still under way should not have stopped her from asking Parliament about the matter – it was up to the institution, and not to her, to decide whether it wished to respond at that time or not;
- The reporting of an allegation certainly would not convince the public that some form of verification had taken place. In the “camera” instance, there could have been no “verification” as the allegation was simply false. And even if there was some sort of verification (which I do not accept regarding the “cameras”), she still should have sought comment from Parliament;
- The argument that Parliament could have responded after publication negates journalists’ ethical duty to obtain (pre-publication) comment from the subject of critical reportage; and
- I have not been presented with a similar article in another publication, so I cannot comment on this part of Merten’s reply.

In short, I believe that Merten should have asked Parliament for comment on the issue of the police entering the Parliamentary precinct as well as on the “cameras”.

Finding

Four allegations

Parliament ‘complicit’

This part of the complaint is **dismissed**.

Installing suspicious-looking cameras

The story stated as fact that there were “a number of these (suspicious-looking) cameras” in Parliament. This was **in breach of** Section 1.1 of the Code of Ethics and Conduct which says, “The media shall take care to report news truthfully, accurately and fairly.”

Frolick

This part of the complaint is **dismissed**, save for the failure to state that the publication was unable to obtain comment from Frolick. It **breached** Section 1.8 of the Code which says, “... If the media are unable to obtain such comment, this shall be reported”.

‘Bouncers’

This part of the complaint is **dismissed**.

Comments

Daily Maverick was **in breach of** the following sections of the Code of Ethics and Conduct:

- 1.8: “The media shall seek the views of the subject of critical reportage in advance of publication...” – the publication should have asked Parliament about the “unlawful” and “unannounced” visit of police investigators to Parliament, and about “cameras”, both of which have contributed to the notion of the securocratisation of the institution (which made Parliament the subject of critical reportage); and
- 1.9: “Where a news item is published on the basis of limited information ... the reports should be supplemented once new information becomes available” – the Daily Maverick did not report the outcome of Parliament’s investigation about the “cameras” as it should have, especially as the article stated as fact that such gadgets existed.

Seriousness of breaches

Under the headline *Hierarchy of sanctions*, Section 8 of the Complaints Procedures distinguishes between minor breaches (Tier 1), serious breaches (Tier 2) and serious misconduct (Tier 3).

The breaches of the Code of Ethics and Conduct as indicated above are all **Tier 2** offences.

Sanction

Daily Maverick is directed to **apologise** to Parliament for neglecting to give it a right of reply prior to publication about:

- police investigators entering the Parliamentary precinct unlawfully and unannounced;

- cameras other than official cameras to broadcast proceedings in the ceilings of the institution; and
- the suggestion of the securocratisation of the institution.

The publication is **reprimanded** for not reporting:

- that the journalist was unable to get comment on Frolick’s alleged statement; and
- the outcome of Parliament’s investigation into the “cameras” in a follow-up story.

The text should:

- be published in the same space as that used for the offending article;
- start with the apology;
- proceed to the reprimands;
- refer to the complaint that was lodged with this office;
- end with the sentence, “Visit www.presscouncil.org.za for the full finding”; and
- be approved by me.

The headlines should contain the words “apology” or “apologises”, and “Parliament”.

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.

Johan Retief
Press Ombud