



UGANDA
COMMUNICATIONS
COMMISSION

IN THE MATTER OF THE UGANDA COMMUNICATIONS ACT, 2013

AND IN THE MATTER OF A COMPLAINT

BY

MR SUUNA EMMANUEL ABDUR SHAKUR (OS-SUNA)

AGAINST

**STAR DTV(U)LTD t/a STAR TIMES (THE LICENSED BROADCASTER OF
SANYUKA TELEVISION)**

DECISION OF THE COMMISSION

1.0 Nature of Complaint

On 13th September 2021, Mr. Suuna Emmanuel Abdur Shakur *a.k.a* OS-SUNA through his lawyers of M/s Elgon Associated Advocates, filed a complaint with the Commission alleging that the content of the program "MORNING EXPRESS" which was broadcast by Sanyuka TV on 27th August 2021 defamed him when the presenter made malicious utterances and unsubstantiated allegations against him.

Mr. Suuna further alleged that the presenters of the subject program, Waako Bryan Kennedy (*a.k.a* Bryan Waako) and Kawalya Ssemulondo Isaac (*a.k.a* Kayz) together with the show panellists, Makuliro William (*Makko Williams*) and Lubega Ismail (*Isma Olaxess*), maliciously uttered words against him with the intention to demean and ridicule him in the eyes of rightful thinking members of society. He alleged that the content and utterances falsely accused him of the following:-

- (a) That he practices witchcraft and owns a shrine.
- (b) That he is a failure in the music industry (*kikonwa*), and he is full of bad luck (*ebipali* and *ebisilaani*).
- (c) That he survives through prostitution by sleeping and having sexual relations with old women who marry and bankroll him.

Mr. Suuna contended that the above allegations and accusations were baseless, untrue, unfounded, and only intended to ultimately tarnish his name and image. In addition, he alleged that he was not provided with an

opportunity to explain himself against the allegations which tantamount to character assassination and malicious defamation. He maintained that the broadcast of this information caused a lot of anxiety and discomfort amongst his family, parents and fans. (*Annex 1- Copy of the Complaint*).

2.0 Procedure followed in hearing the Complaint

Upon receiving the complaint, the Commission, vide a letter dated 07th September 2021, notified and directed Star DTV Uganda Limited, the licensed operator of Sanyuka TV, as follows:-

- (a) To make written representation in response to the complaint and allegations that were by Mr. Suuna.
- (b) To file with the Commission recordings and the script(s) of the program "*MORNING EXPRESS*" that aired on 27th August 2021.

Sanyuka TV duly responded to the compliant vide letter dated 13th September 2021 wherein they contested the jurisdiction of the Commission to entertain the subject complaint, on the ground that the complainant had shown his intention to institute legal proceedings against them and therefore the Commission did not have jurisdiction to hear the matter. Sanyuka TV further argued that hearing of this complaint by the Commission will pre-empt the subsequent proceedings, which the complainant may initiate. Sanyuka TV requested the Commission to discontinue its hearing of the complaint and let the impending court proceedings to take their course and be concluded.

In accordance with its mandate under section 5(1)(j) of the Uganda Communications Act 2013, Regulation 39 of the Uganda Communications (Content) Regulations 2019 and in accordance with Article 28(1) of the Constitution of Uganda, on the 29th of September 2021, the Commission duly convened to hear the parties.

At the start of the hearing, the parties requested to make written submission in respect of the issues and the Commission duly granted the parties' prayer.

Sanyuka TV filed its written response to the allegations vide letter dated 06th October 2021. The Complainant, through his lawyers of M/s Elgon Associated Advocates filed a rejoinder to the written response on the 15th of October 2021.

After evaluating the complaint and the submissions by both parties, the following issues were deduced by the Commission for determination:

Issue 1: *Whether the Commission has jurisdiction to hear and determine the complaint;*

Issue 2: *Whether Sanyuka TV breached the Minimum Broadcasting Standards as enshrined in the Uganda Communications Act, 2013.*

Issue 3: *What the rights and remedies are available to the parties?*

3.0 Resolution of the Issues

Before delving into the substantive issues, it is important at the outset to state the mandate of the Commission with respect to hearing and determination of complaints. Section 5 of the Uganda Communications Act, 2013 enumerates the functions of the Commission as:-

5 (1) (b) to monitor, inspect, license, supervise, control and regulate communication services.

(j) to receive, investigate and arbitrate complaints relating to communication services and take necessary action,

(k) to promote and safeguard the interests of consumers and operators as regards the quality of communications services and equipment.

(x) to set standards, monitor and enforce compliance relating to content.

Section 45 of the Uganda Communications Act of 2013 provides that:

The Commission may investigate any matter within its functions under this Act which relates to—

(a) communications services or apparatus provided or supplied in Uganda; and

(b) any representation made to the Commission by or on behalf of a person whom the Commission considers to have an interest in the matter which is the subject of the representation.

Regulation 39 of the Uganda Communications (Content) Regulations 2019 provide that:

39. Content complaints

(1) The Commission may, on its own, on the written request of an operator or referral of a consumer complaint filed under the Uganda Communications (Consumer Protection) Regulations 2019, or any other party who has a complaint against an operator, investigate complaints on the following matters-

(a) N/A

(b) N/A

(c) violation of minimum broadcastings standards or breach of the provisions of these Regulations; or

(d) any other dispute of a non-commercial nature arising in the ordinary course of business of an operator.

Regulations 7 and 8 of the Uganda Communications (Consumer Protection) Regulations S.I 87 of 2019 further provide for the powers and procedure through which the Commission is mandated to handle consumer complaints.

For ease of reference, the relevant parts of Regulations 7 and 8 are reproduced hereunder:

7. *Powers of the Commission*

The Commission shall-

- (a) N/A*
- (b) Promptly receive, investigate and arbitrate any consumer complaint relating to communication services, including quality of service and take necessary action.*
- (c) Compel an operator to resolve any consumer complaint filed with the Commission.*
- (d) N/A*
- (e) N/A*
- (f) N/A*
- (g) N/A*
- (h) N/A*
- (i) N/A*
- (j) Where necessary, refer a complaint to other law enforcement agencies for investigation and prosecution.*

Regulation 8 (12) of the Uganda Communications (Consumer Protection) Regulations 2019 provide as follows:

- (12) The Commission may, in handling a complaint under sub regulation (5)-*
- (a) give all affected parties notice of its investigations and a copy of the complaint.*
 - (b) give the complainant and any person or operator accused in the complaint, an opportunity to appear and provide any further evidence required by the Commission to make a decision.*
 - (c) N/A*
 - (d) make findings and take appropriate action to-*
 - (i) require an operator to supply goods or services for a specified period*
 - (ii) require an operator to supply goods or services under specified terms and conditions;*
 - (iii) make an order requiring an operator or licensee to pay costs to a consumer;*
 - (iv) make an order requiring a consumer to pay costs to an operator;*
 - (v) make an order requiring an operator or licensee to replace or repair defective or malfunctioning equipment or in lieu thereof, refund the consumer the cost of the purchase.*
 - (vi) require an operator to appear at a hearing or to produce documents;*
 - (vii) dismiss a complaint;*

- (viii) impose a fine, depending on the nature of the complaint; or*
(ix) order a consumer refund.

Moreover, Regulation 4 of the Uganda Communications (Consumer Protection) Regulations 2019 define a complaint to mean any written or oral representation of dissatisfaction about the provision of or failure to provide communication service or product. The same Regulations 4 defines a consumer to mean a final user of communications apparatus, communications services or value-added services or a customer and includes a purchaser for value of communications apparatus or communications services regulated by the Commission under the Act, but does not include an operator, wholesaler or retailer of communications apparatus or communications and value added services.

Communication services on the other hand are defined in Section 2 of the Uganda Communications Act 2013 and the Regulation 4 of the Uganda Communications (Consumer Protection) Regulations 2019 to mean services performed consisting of the dissemination or interchange of audio-visual or data content using postal, radio, or telecommunications media or data communications, and includes broadcasting and value-added services.

From the above expose of the legal provisions, it is apparent that the complainant in this matter is a person whom the Commission considers to have an interest in the matter which is the subject of the representation and a consumer of communication services. He is thus entitled under section 5(1)(j) of the Uganda Communications Act 2013 and Regulation 39(1) of the Uganda Communications (Content) Regulations 2019 to lodge a complaint with the Commission.

We shall accordingly now move to resolve the issues as framed above.

Issue 1: Whether the Commission has jurisdiction to hear and determine the complaint;

From the above provisions of the law, it is undisputed that the Commission is clothed with the requisite jurisdiction to entertain complaints relating to communication services, the current complaint inclusive.

We, however, note that through its letter dated 13th September 2021, Sanyuka TV contests the jurisdiction of the Commission claiming that the Complainant had shown his intention to institute legal proceedings and therefore the Commission does not have jurisdiction to hear and determine the complaint. Sanyuka TV contends that hearing of this complaint by the Commission will pre-empt the other proceedings which the complainant may file in court. Sanyuka TV urged the Commission to discontinue hearing of the complaint and let the impending court proceedings to take their course and be concluded.

Sanyuka's view was vehemently contested by the lawyers for the Complainant who stated that the complainant had approached the Commission to enforce its mandate in respect to enforcement of the Minimum Broadcasting Standards in respect to content. Other remedies the Complainant is seeking

are subject to different processes and not connected at all to the mandate of the Commission.

The Commission has reviewed all the submissions by both parties and the relevant provisions of the Uganda Communications Act 2013 and the Regulations made thereunder and finds that the Complainant has a right to choose whichever forum to lodge his complaint before. Since the complainant has chosen to pursue his case at the Commission, section 5(1)(j) of the Uganda Communications Act 2013 and Regulation 39 of the Uganda Communications (Content) Regulations 2019 specifically bestow upon the Commission the legal mandate and jurisdiction to hear this complaint in respect to the aspects that follow within its mandate as specified in the Uganda Communications Act, 2013.

The Commission can only stop exercising its legal mandate if there is a valid order issued by a court of competent jurisdiction directing the Commission to halt enforcement of its mandate in a certain matter. In the absence of that order, the Commission remains empowered and justified to exercise its jurisdiction despite the Complainant having also complained in other fora.

It should be noted that in the current case, no evidence was adduced by the counsel for Sanyuka TV to prove that this matter was pending before any court of competent jurisdiction in Uganda. All that was alluded to is a Letter of intention to sue and not any court documents. If the Commission stops exercising its mandate over this matter merely because the complainant has threatened to sue the Respondents, this will amount to abdication of its legal and regulatory duty to enforce compliance with the Broadcasting Standards as mandated by the Uganda Communication Act, 2013.

It is therefore the Commission's finding that this complaint is well within its jurisdiction and the objections raised by counsel for Sanyuka TV are accordingly overruled.

Issue 2: Whether Sanyuka TV breached the Minimum Broadcasting Standards as enshrined in the Uganda Communications Act, 2013.

The complainant alleged that the conduct and content of Sanyuka TV breached the Minimum Broadcasting Standards. It is important to restate at this point what the Minimum Broadcasting Standards are as enshrined in section 31 and schedule 4 of the Uganda Communications Act, 2013.

Section 31 states:-

A person shall not broadcast any program unless the broadcast or programme complies with schedule 4.

Schedule 4 states:

A broadcaster or video operator shall ensure that—

(a) any programme which is broadcast—

(i) is not contrary to public morality;

(ii) does not promote the culture of violence or ethnical prejudice among the public, especially the children and the youth;

- (iii) in the case of a news broadcast, is free from distortion of facts;*
- (iv) is not likely to create public insecurity or violence;*
- (v) is in compliance with the existing law;*
- (b) programmes that are broadcast are balanced to ensure harmony in such programmes;*
- (c) adult-oriented programmes are appropriately scheduled;*
- (d) where a programme that is broadcast is in respect to a contender for a public office, that each contender is given equal opportunity on such a programme;*
- (e) where a broadcast relates to national security, the contents of the broadcast are verified before broadcasting*

In reading through the above legal provisions, clause (a) (iii), (v) and (b) impose a clear legal obligation on every broadcaster, in this case Sanyuka TV, to ensure that all content broadcast through all its programs, at all times, comply with the set standards.

The same requirements are further entrenched in Regulation 8 (2), (3) and (4) of the Uganda Communications (Content) Regulations 2019, which provide as follows:

8. General requirements.

(1) N/A

(2) An operator shall not broadcast any material which-

- (a) uses or contains offensive language; including profanity and blasphemy;*
- (b) presents sexual matters in an explicit and offensive manner;*
- (c) glorifies violence or depicts violence in an offensive manner;*
- (d) is likely to create public insecurity or violence, incite, perpetuate hatred or vilify any person or section of the community on account of race, ethnicity, nationality, gender, age, disability, religion or culture of that person or section of the community.*
- (e) has no program rating indicated prior to the commencement of the program; or*
- (f) is not in compliance with the law.*

(3) An operator shall ensure that any program which is broadcast is not contrary to public morality and does not promote violence or ethnic prejudice among the public especially children and the youth.

(4) An operator shall ensure that-

(a) adult-oriented programs are appropriately scheduled in accordance with Regulation 28; and

(b) where a broadcast relates to national security, the content of the broadcast are verified by the broadcaster before broadcasting.

Regarding unconfirmed reports, Regulation 11 of the Uganda Communications (Content) Regulations 2019 clearly commands broadcasters as follows:

11. Unconfirmed reporting

An operator shall not broadcast any report-

- (a) that is not based on fact or that is founded on opinion, rumour, supposition or allegation, unless the broadcast is carried out in a manner that indicates these circumstances clearly; or*
- (b) where there is sufficient reason to doubt its accuracy and it is not possible to verify the accuracy of the report before it is broadcast.*

According to the complaint, Mr. Sunna alleged that the content broadcast by Sanyuka TV during the subject program contained malicious utterances and unsubstantiated allegations against him. The allegation complained about are that:-

- (i) Mr. Sunna practices witchcraft and owns a shrine.
- (ii) Mr. Sunna is a failure in the music industry (*kikonwa*), and he is full of bad luck (*ebipali* and *ebisilaani*).
- (iii) Mr. Sunna survives through prostitution by sleeping and having sexual relations with old women who marry and bankroll him.

Practicing witchcraft:

Sanyuka TV, through their written representation dated 06th October 2021 and filed with the Commission on 07th October 2021 did not deny that the above statements were aired on their station but argued that the statements were not made by the staff of Sanyuka TV, but by the guests during the show.

Survives through prostitution by sleeping and having sexual relations with old women who marry and bankroll him.

In their submission, Sanyuka TV, did not deny that the above statement was aired on their station but maintain that the statement was not made by the staff of Sanyuka TV though the guests in the program made comments on the same statement.

Complainant's Shows are the cheapest whose entrance fees cannot exceed UGX 2000 (Two Thousand Shillings Only).

In their submission, Sanyuka TV, did not deny that the above statement was made on their station but claim that the statement was by the show guests, and not made by the staff of Sanyuka TV.

Complainant is a stupid man who doesn't understand and is not knowledgeable.

In their submission, Sanyuka TV, did not deny that the above statement was aired but argued that the statements were not made by the staff of Sanyuka TV though the guests on the show made comments on the same statement.

In the complainant's rejoinder made vide submissions dated 11th October 2021, he maintained that all the above statements amounted to a breach of the minimum broadcasting standards.

Having reviewed the content aired, the Commission is of a considered view that it regulates the content aired on the platform regardless of who said it.

According to section 2 of the Uganda Communications Act 2013 and Regulation 3 of the Uganda Communications (Content) Regulations 2019 "content" means any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically.

From the evidence on record, it is undenied by all parties that the impugned audio-visual statements were broadcast on Sanyuka TV on the 27th of August 2021, which means that it ought to have conformed to each and every provision of the Uganda Communications Act 2013 and the Regulations made thereunder, as well as other laws of Uganda.

The fact that the subject statements were broadcast on Sanyuka TV renders Star Dtv (U)Ltd t/a Star Times, the licensed broadcaster and operator of Sanyuka TV, responsible for its compliance with the set standards. Sanyuka TV cannot evade culpability for airing the impugned content, merely because the statements were made by the guests.

Under the laws of Uganda, it is clear that broadcasters have a duty to comply with the Minimum broadcasting standards and the content regulations at all times during all programs. It is wrong for any broadcaster to hide behind the cover of guests. Guests are not broadcasters, and it is the duty of every broadcaster to ensure that the people they host during programs are adequately prepared and educated about the do's and don'ts of broadcasting to avoid violating the law and the set standards.

It is the Commission's finding that the comments that were made during the impugned program, if taken in totality, were in breach of the Minimum broadcasting standards as they were broadcast by Sanyuka TV without any evidence to back them up. In addition, Sanyuka TV did not dispense with its obligation to establish the correctness and veracity of such statements. Sanyuka TV's presenters did not even task the guests who directly uttered the offensive comments and allegations to prove their claims, a mistake that fell below the standards required of broadcasters.

The Minimum Broadcasting Standards, among others, require that programmes that are broadcast are balanced to ensure harmony in such programs.

Reviewing the content complained about that was aired on 27th August 2021, the Commission finds that the content broadcast was one sided, without any balance. The program contained many unconfirmed allegations (as outlined above) which required balancing by seeking for the Complainant's side of the side before proceeding to broadcast it.

Whereas Article 29(1)(a) of the Constitution of Uganda recognises the right of the media, this right is not absolute and is supposed to be exercised responsibly to avoid trampling on other people's rights. This was recently emphasised by Justice Musa Ssekaana in the case of **Pius Bigirimana v The Monitor Publication Ltd & 4 Others HCCS No. 612 of 2017** when he stated at page 41 thus:

"The conflict between freedom of expression and the right of the individual to his or her good name must be balanced and weighed against each other. In the case of Argus Printing and Publishing Co. Ltd v Esselen's Estate [1994]2 ALL SA 160, the court accepted that freedom of expression and the press are potent and indispensable instruments for the creation and maintenance of a democratic society, but added:

' The right of freedom of expression enjoyed by all persons, including the press, must yield to the individual's right, which is just as important, not to be unlawfully defamed. I emphasise the word "unlawfully" for, in striving to achieve an equitable balance between the right to speak your mind and the right not be harmed by what another says about you, the law devised a number of defences, such as fair comment, justification (i.e truth and public benefit) and privilege, which if successfully invoked, render lawful the publication of matter which is prima facie defamatory.....the resultant gives the due recognition and protection, in my view, to freedom of expression.'

The learned justice further stated in the same case of **Pius Bigirimana v The Monitor Publication Ltd & 4 Others (supra)** at page 42 that:

"The importance of the press is recognised but on the other hand, the right to dignity (and thus right to one's good name or reputation) is regarded as founding value of the constitution. Therefore, there must be a balancing act between the two rights and one cannot be used to violate the other. The defendants in this case cannot justify their actions that are negligent and reckless in nature to violate the plaintiff's reputation under the guise of informing the public."

Based on the evidence on record, it is difficult to find any specific justification why Sanyuka Tv decided to broadcast the impugned statements/commentary against the complainant. Some of the allegations such as the claim that the complainant practices witchcraft and owns a shrine needed specific evidence before the broadcaster could right broadcast them.

From the Complainant's letter to Next Media Services dated August 31st August 2021, he demanded an apology and retraction of the allegations from

Sanyuka TV which was not offered. However, Sanyuka TV through its submission dated 13th September clearly stated that they had evidence to back up the content they aired.

After carefully reviewing the content (video recordings) submitted to the Commission as evidence, the Commission finds the evidence contained in the recordings was not sufficient to fulfil the aspect of balancing the story. The recordings did not contain sufficient evidence to prove that the Complainant practices witchcraft or owns a shrine. It should be noted that an allegation against an individual that he or she practices witchcraft, a practice prohibited under section 2 of the Witchcraft Ordinance, are very grave and should have been verified before being broadcast.

Section 2 (3) of the witchcraft Act, states that:-

Any person who practises witchcraft or who holds himself or herself out as a witch, whether on one or more occasions, commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

Standards 11.3 of the Standards for General Broadcast Programming in Uganda states:-

Programmes exploring occult or 'psychic' practices, particularly those with actual demonstrations of exorcisms and occult practices involving supposed contact with spirits or the dead, should be treated with caution.

In broadcasting such content, Sanyuka TV did not take the necessary precaution as required by the Regulations and Standards. Even if Sanyuka TV were to argue that they broadcast the said content in public interest, considering that the statements were inherently controversial, the presenters ought to have adhered to the requirements under Regulation 13 of the Uganda Communications (Content) Regulations 2019 which provides as follows:

13. Reporting on controversial issues

An operator shall ensure that when broadcasting controversial issues of public interest during live broadcast-

- (a) a wide range of views and opinions are represented;*
- (b) a person or organisation whose views on any controversial issues of public interest have been criticised during a broadcast, and who replied to the criticism within a reasonable time, shall be offered an opportunity by the operator to reply to the criticism; and*
- (c) a reply to criticism under paragraph (b) is given a similar degree of prominence and shall be broadcast in a similar time-slot, as soon as is reasonably possible, but in any case not later than 48 hours from the date the broadcast under paragraph (b) is aired.*

It is therefore apparent that Sanyuka TV should have clearly cross-checked with the complainant and other independent witnesses to confirm that the subject allegations are valid and truthful before they were aired, especially in view of provision such as Regulation 11 of the Uganda Communications



(Content) Regulations, 2019, S.I. No. 91 of 2019, which prohibit broadcasting of unsubstantiated content. It states:-

An operator shall not broadcast any report

- a. that is not based on fact or that is founded on opinion, rumour, supposition or allegations, unless the broadcast is carried out in a manner that indicates these circumstances clearly.*
- b. Where there is sufficient reason to doubt its accuracy and it is not possible to verify the accuracy of the report before it is broadcast.*

It should be noted that journalists are mandated to abide by the professional code of ethics stipulated under the Press and Journalist Act. Section 32 (1) of the Uganda Communications Act, 2013 states:-

Subject to this Act, the ethical broadcasting standards which apply to broadcasters are the professional code of ethics specified in the First Schedule to the Press and Journalist Act.

The issue of balance and right to reply is also imposed on journalists though the Press and Journalist (Amendment of Fourth Schedule) Instrument, No. 5 of 2014 that states:-

Code Number 2 states:

- (1) Journalists and editors must take care not to publish inaccurate, misleading or distorted information, including pictures.*
- (2) Any significance inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and , where appropriate an apology should be published.*
- (3) N/A*
- (4) Journalists and editors must afford a fair opportunity for reply to inaccuracies when reasonably required.*

From the above, journalists on the program did not adhere to this code of conduct required of them and ended up breaching the Minimum Broadcasting Standards.

In addition, the Standards for General Broadcast programming in Uganda offer guidance on the issue of fairness, objectivity and impartiality in respect to news and or current affairs content. Standard 12 provides as follows:-

i. Every broadcaster shall ensure that—

(a) all news broadcast by the broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views,

(b) the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views, except that should it prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a

whole, if the broadcasts are transmitted within a reasonable period of each other,

ii. N/A

iii. A right of reply or an opportunity to respond shall be granted to the Government or its agencies, to correct mistakes, wrongful reporting or misrepresentations. For private individuals and groups, an opportunity to respond should be considered on the merits of each case. The Commission shall direct a broadcaster to give an aggrieved party the opportunity to respond over an appropriate medium.

iv. Significant errors in factual programmes such as news, current affairs and documentary programmes should be corrected and broadcast at the earliest opportunity.

Based on the above analysis, it is clear that Sanyuka TV failed to dispense with the obligation of fairness, objectivity and impartiality regarding its content when it failed to contact the Complainant for his side of story and hence breached section 31 and Standard (a)(v) and (b) of Schedule 4 of the Uganda Communications Act 2013 as well as Regulation 11 of the Uganda Communications (Content) Regulations 2019.

On the issue of public morals and social values, a broadcaster is required by the above stated provisions of the law not to broadcast any content that is against public morality. Statements by Sanyuka TV alleging that the Complainant survives through prostitution by sleeping and having sexual relations with old women who marry and bankroll him are against public morality.

Standards 6 of the Standards for General Broadcast programming in Uganda is categorical on the issue of public morals and social values especially of the family. The Standard states:-

*Broadcasters should bear in mind the importance of the family as the basic unit of society in Uganda. The sanctity of marriage should be respected, and divorce should not be treated casually or in a frivolous manner. **Adultery, cohabitation and promiscuity should not be endorsed, glamorized or encouraged.***

In broadcasting such content about the family issues of the Complainant, Sanyuka TV clearly breached this obligation.

It should be noted that through the letter dated 13th September, Sanyuka TV states as follows:-

“as a friendly party, we have made attempts to reach out to them in a spirit of brotherhood and reconciliation”.

This statement shows that Sanyuka TV's content clearly offended the Complainant and hence the claim by Sanyuka TV to approach the Complainant to resolve the matter amicably.

The Minimum Broadcasting Standards require compliance with other laws.

The first law required to be complied with is the Constitution of the Republic of Uganda. The Constitution provides for privacy under Article 27 (2) that states:-

No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

The Parliament of Uganda enactment the Data Protection and Privacy Act, 2019 which commands all persons to protect the privacy of others. Section 10 states as follows:-

"A data collector, data processor or data controller shall not collect, hold or process personal data in a manner which infringes on the privacy of a data subject".

The Uganda Communications (Content) Regulations, 2019, S.I. No. 91 of 2019 clearly amplify the issue of privacy. Regulation 38(1) states:-

A broadcaster shall not use material relating to a person's personal or private affairs or which invades an individual's privacy, except where there is compelling and legitimate public interest for the material to be broadcast.

Code 3 of Press and Journalist (Amendment of Fourth Schedule) Instrument, No. 5 of 2014 states:-

"Journalists and editors shall respect the constitutional right to privacy of home, correspondence, communication and other property enshrined in the constitution.

It should be noted that the intrusion into an individual's affairs including marital affairs constitute intrusion of an individual's privacy. Statements like the Complainant surviving through prostitution by sleeping and having sexual relations with old women who marry and bankroll him were totally an intrusion into the Complainant's private life. Sanyuka TV through its submission states that it has evidence that the complainant was dating older women and attached videos where it claims that the Complainant stated the same.

However, upon review of the content provided, the Commission is not convinced that this was sufficient evidence to warrant the broadcasting of the said comments against the complainant. Even if the Complainant had indulged in such behaviour, as Sanyuka TV alleges, Sanyuka TV was not obliged to broadcast such content as it does not fit into issues that constitute newsworthy items of public interest. Marital issues are private matters which should not be broadcast unless a broadcaster can prove, with cogent evidence, that there is a compelling and legitimate public interest to justify the broadcasting of such content. It should be noted that section 28(b) of the Uganda Communications Act, 2013 states that a broadcaster is not absolved from complying with any law which prohibits any broadcasting which infringes upon privacy of any individual.

It is therefore the Commission's finding that Sanyuka TV was not justified to broadcast such intrusive content about the complainant.

Issue 3: What rights and remedies available to the parties?

The complainant has prayed for the following reliefs in his complaint letter:-

- (a) The Commission to intervene and condemn such acts and programs aimed at defaming artists being that you are a regulator of all communication services.
- (b) To enforce the minimum broadcasting standards against some Next Media Services programs that use offensive language against the consumers.

Further, through the written submissions to the Commission, the Complainant prayed for other reliefs as follows:-

- a. That the commission invokes its powers under section 5 and 6 of the Uganda Communications Act, 2013 and take necessary action.
- b. The said program and other similar programs which violate the minimum broadcasting standards be banned.
- c. That the respondents (Sanyuka TV) pay to the complaint Shs 1,000,000,000 (One Billion) for damages occasioned by offensive communication and defamation to him.
- d. That the respondents (Sanyuka TV) retract the false accusations.
- e. That the Respondents offer a public apology to the Complainant.
- f. That the tribunal reprimands the respondents for breach of Minimum Broadcasting Standards, misconduct and unprofessionalism.
- g. That the Respondents (Sanyuka TV) pay UGX 100,000,000 for its legal fees
- h. That the Respondents (Sanyuka TV) be ordered to restrain from airing any further defamatory statements against the complainant.

It should be noted that most of the reliefs sought by the Complainant require specific evidence which must be recorded on oath and witnesses properly subjected to cross examination before one can appropriately determine the extent of damage or the injury suffered by the victim or complainant.

Whilst the Commission is mandated to entertain this complaint, the Commission is disinclined to grant monetary related reliefs. These can best be sought in a court of law. An example are prayers referring to payment of compensation to the Complainant as a result of defamation. Defamation claims are issues that can be best adjudicated upon by a court of competent jurisdiction and therefore not within the Commission's mandate.

It is the Commission's finding that although section 5(1)(j) of the Uganda Communications Act 2013 widely empowers the Commission to receive, investigate and arbitrate complaints relating to communication services and take any necessary action, this mandate does not extend to making orders that would most suitably be made in court proceedings, after receiving evidence on oath from the complaints and witnesses to prove their claims.

The Commission is therefore declines to make an award of general damages as prayed for by the complainant.

In the upshot, the Commission finds that Sanyuka TV breached the Minimum Broadcasting Standards, Standards for General Broadcast Programming in Uganda and the Code of Ethics for Journalists, when its broadcast prohibited content through its program "*MORNING EXPRESS*" that aired on 27th August 2021.

(d) Directives on the implementation of the Decision.

Having reviewed the complaint, the written submissions presented by both parties and analysed the provisions of the law, regulations and standards as outlined above, the Commission finds Sanyuka TV to have breached the Minimum Broadcasting Standards, Standards for General Broadcast Programming in Uganda and the Code of Ethics for Journalists, through its program *MORNING EXPRESS* that aired on the 27th of August 2021 and in accordance with its mandate under sections 5(1)(j) of the Uganda Communications Act 2013, Regulation 39 of the Uganda Communications (Content) Regulations 2019 and Regulations 7 and 8 of the Uganda Communications (Consumer Protection) Regulations 2019, the Commission hereby directs Sanyuka TV as follows:-

1. Sanyuka TV should immediately retract the statements that were made against the Complainant during its program *MORNING EXPRESS* that aired on the 27th of August 2021. The retraction should be effected by broadcasting an unconditional apology to the Complainant during the same program. The presenters should ensure that the apology is made with an equivalent degree of prominence and timing in accordance with Regulation 12 of the Uganda Communications (Content) Regulations, 2019.
2. Sanyuka TV should Immediately provide space and time to the complainant and/or his lawyers for him/them to appear during the same program *MORNING EXPRESS* and offer his side of the story in response to the allegations that were made against him. This content should be made with an equivalent degree of prominence like the impugned broadcast.
3. Sanyuka TV should immediately institute measures to ensure that all content broadcast during the program *MORNING EXPRESS* and all other programs comply with the minimum broadcasting standards and other applicable laws.
4. Sanyuka TV should, in accordance with Regulation 40 and 41(1)(b) of the Uganda Communications (Content) Regulations 2019, and with Regulation 8(12)(d)(viii) of the Uganda Communications (Consumer Protection) Regulations 2019 and Item 12 of Part II of Schedule 1 of The Uganda Communications (Fees and Fines) (Amendment) Regulations, 2020, S.I. No. 66, pay to the Commission a fine of USD 260 (US Dollars

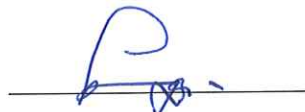
Two Hundred and Sixty) for distributing prohibited content contrary to the Uganda Communications (Content) Regulations 2019.

5. Sanyuka TV should, in accordance with Regulation 40 and 41(1)(b) of the Uganda Communications (Content) Regulations 2019, and with Regulation 8(12)(d)(viii) of the Uganda Communications (Consumer Protection) Regulations 2019 and Item 18 of Part II of Schedule 1 of The Uganda Communications (Fees and Fines) (Amendment) Regulations, 2020, S.I. No. 66, pay to the Commission a fine of USD 260 (US Dollars Two Hundred and Sixty Only) for noncompliance with the Minimum broadcasting standards.
6. Sanyuka TV should file with the Commission evidence of fulfilment of all the above directives within a period of five (5) days from the date of this decision.

In accordance with Regulation 7(j) of the Uganda Communications (Consumer Protection) Regulations 2019, the Complainant may pursue his claim for damages in a competent court of jurisdiction.

In accordance with section 55(9) of the Uganda Communications Act 2013, Regulation 44 of the Uganda Communications (Content) Regulations 2019 and Regulation 32 of the Uganda Communications (Consumer Protection) Regulations 2019, if any of the parties to this complaint is aggrieved by this decision, he or she has a right of appeal within a period of thirty days from the date of this decision.

Delivered at Bugolobi, Kampala this...13...day of December 2021



Irene Kaggwa Sewankambo
Ag. EXECUTIVE DIRECTOR
For and on behalf of the Uganda Communications Commission

