



**Our Ref:** LA/182

9<sup>th</sup> August 2022

1. The Disciples of Odrek M Rwabogo  
Malcom X Plot 10, Kololo,  
0704549046/0705265956  
**KAMPALA**
2. abbasadvocates  
Lugogo House, 42, Lugogo Bypass,  
**KAMPALA**
3. The Managing Director,  
Select 4 Fun Limited t/a STV  
**KAMPALA**
4. The Managing Director,  
Auger Revival Ministries Limited t/a ABS TV  
**KAMPALA**
5. The Managing Director,  
Bishop Herbert Kuuku & Sons Ltd t/a HG TV  
**KAMPALA**
6. The Managing Director,  
Radio 4 FM Uganda Ltd t/a Radio 4  
**KAMPALA**
7. The Managing Director,  
Pearl of Africa Radio Ltd t/a Pearl FM  
**KAMPALA**
8. The Publishing Editor/Producer  
Kasuku live  
0758881542

Dear All,

**DECISION IN THE MATTER OF A COMPLAINT BY ODREK M. RWABOGO  
& DISCIPLES OF ODREK M. RWABOGO v STV, ABS TV, HG TV, RADIO  
4, PEARL FM AND KASUKU LIVE**

We refer to the above subject matter and the hearing that was held on the 18<sup>th</sup> May 2022.

*Communication for All*

In exercise of its powers under sections 5(1)(j) of the Uganda Communications Act 2019 and Regulation 39(1) of the Uganda Communications (Content) Regulations 2019, the Uganda Communications Commission (the Commission) considered your respective submissions in respect of this matter and has made a decision, a copy of which herewith forwarded for your information and necessary action.

Thank you for your cooperation.



Christine Mugimba

**Ag. EXECUTIVE DIRECTOR**



**UGANDA  
COMMUNICATIONS  
COMMISSION**

**IN THE MATTER OF THE UGANDA COMMUNICATIONS ACT, 2013**

**AND**

**IN THE MATTER OF A COMPLAINT**

**BY**

- 1. ODREK M. RWABOGO**
- 2. THE DISCIPLES OF ODREK M. RWABOGO**

**AGAINST**

- 1. SELECT 4 FUN LIMITED t/a STV**
- 2. AUGER REVIVAL MINISTRIES LIMITED t/a ABS TV**
- 3. BISHOP HERBERT KUUKU & SONS LIMITED t/a HG TV**
- 4. RADIO 4 FM UGANDA LIMITED t/a RADIO 4**
- 5. PEARL OF AFRICA RADIO LIMITED t/a PEARL FM**
- 6. KASUKU LIVE**

### **DECISION OF THE COMMISSION**

#### **1.0 Nature of Complaint**

On 3<sup>rd</sup> March 2022, the Commission received a complaint from a group of people who refer to themselves as the Disciples of Odrek M. Rwabogo. Another complaint was also received from Messrs Abbas Advocates, counsel for Mr. Odrek M. Rwabogo vide a letter dated 22<sup>nd</sup> April 2022.

Both complaints alleged that STV, ABS TV, HG TV, Radio 4, Pearl FM, and Kasuku Live (the "Respondent Broadcasters") feature a one Joseph Tamale Mirundi on their programs, and contrary to the minimum broadcasting standards enshrined under the Uganda Communications Act 2013 and attendant Regulations, allow him to utter several unsubstantiated statements against the person of Mr. Odrek M. Rwabogo and other personalities in Uganda.

In particular, the complainants allege that the Respondent Broadcasters broadcast a myriad of false, offensive and biased stories against Mr. Odrek M. Rwabogo and other personalities without verifying the subject matter allegations and/or according to the persons discussed during the impugned programs any opportunity to respond and/or share their perspective on the allegations made against them.

It was further alleged that the Respondent Broadcasters, while hosting Mr. Joseph Tamale Mirundi as a guest on their stations, allowed him to maliciously utter words against Mr. Odrek M. Rwabogo with the intention to demean and ridicule him in the eyes of rightful thinking members of society.

It was alleged that the content and utterances falsely accused Mr. Rwabogo of the following:

- (a) That he engages in human trafficking.
- (b) That he deals in the illegal trade in human organs.
- (c) That he connived to embezzle funds meant for the Presidential and Parliamentary elections campaigns.
- (d) That he has commandeered and holds several sectors hostage including: the beef sector, dairy sector, leather and tanning sector and the fisheries sector.

It was contended that the above allegations and accusations were baseless, untrue, unfounded, and only intended to ultimately tarnish Mr. Rwabogo's name and image. In addition, it was alleged that Mr. Rwabogo 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, friends and well-wishers.

## **2.0 Procedure followed in hearing the Complaint**

### **2.1 Notification to all Respondent broadcasters.**

Upon receiving the complaint, the Commission, vide a letter dated 4<sup>th</sup> May 2022, notified and directed STV, ABS TV, HG TV, Radio 4, Pearl FM and Kasuku Live, respectively as follows:

- (a) That each of the respective broadcasters make written representation in response to the complaint and allegations that were made by Mr. Odrek M. Rwabogo and the Disciples of Odrek M. Rwabogo.
- (b) That STV files with the Commission recordings and the script(s) of the program "*SHARP TALK*" that aired during the period 4<sup>th</sup> March 2022 to 4<sup>th</sup> May 2022.
- (c) That ABS TV files with the Commission recordings and the script(s) of the program "*OMUKULEMBEZE W'ENKYA*" that aired during the period 4<sup>th</sup> March 2022 to 4<sup>th</sup> May 2022.
- (d) That HG TV files with the Commission recordings and the script(s) of the program "*ETTAALA NE TAMALE MIRUNDI*" that aired during the period 4<sup>th</sup> March 2022 to 4<sup>th</sup> May 2022.

- (e) That Radio 4 files with the Commission recordings and the script(s) of the program “GW’ENSONGA” that aired during the period 4<sup>th</sup> March 2022 to 4<sup>th</sup> May 2022.
- (f) That Pearl FM files with the Commission recordings and the script(s) of the program “THE PATRIOT” that aired during the period 4<sup>th</sup> March 2022 to 4<sup>th</sup> May 2022.
- (g) That Kasuku Live files with the Commission recordings and the script(s) of programs that aired during the period 4<sup>th</sup> March 2022 to 4<sup>th</sup> May 2022.
- (h) That each of the respective broadcasters explain their arrangement with, and/or the role of Mr. Joseph Tamale Mirundi.

## **2.2 Responses from broadcasters.**

ABS TV, Pearl FM, Radio 4, Kasuku Live each duly responded to the compliant vide letters dated 9<sup>th</sup> May 2022 while HG TV responded vide letter dated 16<sup>th</sup> May 2022. No written response was received by the Commission from STV.

In its response, ABS TV confirmed that it aired episodes of the “OMUKULEMBEZE W’ENKYA” program that were the subject of this complaint. However, that following receipt of the complaint, ABS TV had suspended the program until further notice. ABS asked for more time to allow them to access the recordings and scripts of the program from its archives before the same can be submitted to the Commission

Pearl FM’s response confirmed that it airs “THE PATRIOT” program that is the subject of this complaint every Saturday from 9:00am to 11:00am where Mr. Joseph Tamale Mirundi is regularly hosted. However, Pearl FM denied that Mr. Tamale Mirundi makes malicious utterances against Mr. Rwabogo.

Pearl FM also averred that it had no proof that the personalities discussed by Mr. Tamale Mirundi on the said program were in fact Mr. Odrek M. Rwabogo or the other persons mentioned, arguing that Mr. Tamale always uses “*a disclaimer by saying that the recordings [that Mr. Tamale Mirundi plays during the program] are fake*”. Pearl FM further stated that they saw no need to inconvenience the personalities allegedly being discussed in the recordings that he plays on the said program since Mr. Tamale Mirundi “*always says that the recordings are fake.*”

Pearl FM also averred that on 24<sup>th</sup> June 2021 Mr. Odrek M. Rwabogo had the occasion to address several media houses, including Pearl FM, on the alleged slander campaign by Mr. Tamale Mirundi. In the said interface, Mr. Rwabogo allegedly denied that he was the subject of Mr. Tamale Mirundi’s attacks, and therefore saw no need to respond to Mr. Tamale Mirundi’s allegations.

Pearl FM added that the public is always accorded an opportunity to comment on the topics being discussed. The studio opens its telephone lines to enable listeners to call into the program, others participate through social media platforms like WhatsApp and Facebook since the program is streamed live on Facebook.

### **2.3 Hearing of the parties.**

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, the Commission duly convened a joint hearing session for both the complainants and the Respondent broadcasters on 18<sup>th</sup> May 2022.

The hearing was attended by representatives of the Disciples of Odrek M. Rwabogo, Abbas Advocates, Kasuku Live, Radio 4, HG TV, Pearl FM, STV, and ABS TV. The hearing was chaired by the Acting Director of Industry Affairs and Content.

The Commission invited the parties to make their oral submissions on the matter. Counsel Abbas Nsamba of Abbas Advocates made an opening statement on behalf of his client, Odrek M. Rwabogo. He reiterated that Mr. Tamale Mirundi was a regular guest at the broadcasters complained about by his client. Mr. Nsamba noted that his client had previously complained about sustained attacks by Mr. Tamale Mirundi, which resulted in NBS TV suspending Mr. Tamale Mirundi's show. Further that on several occasions, while appearing as a guest during the Respondent Broadcasters's programs, Mr. Tamale Mirundi has made disparaging utterances against Mr. Rwabogo alleging *inter alia* that Mr. Rwabogo trades in human organs and is responsible for the loss of many lives in Uganda. Mr. Nsamba challenged the broadcasters to adduce evidence of his client's alleged trade in human organs.

In closing, Mr. Nsamba invited the Commission to play several video and audio recordings of TV and radio shows on which Mr. Tamale Mirundi was alleged to have made maligning remarks against several personalities including Mr. Odrek M. Rwabogo.

Having heard the summation of the complaint, the Commission invited the Respondent Broadcasters to respond to the allegations made by the complainant.

#### **(i) Pearl FM**

Pearl FM 107.9 was represented by Mr. Fred Mukasa Kiku. He reiterated the contents of Pearl FM written response to the complaint as submitted to the Commission. Mr. Kiku noted that while it is true that Pearl FM hosts Mr. Tamale Mirundi, Pearl FM follows its editorial policy whenever Mr. Tamale Mirundi is hosted, including contacting the persons discussed during the show for comments and playing disclaimers during and after the show. Mr.

Kiku added that Mr. Rwabogo in August 2021 called a press conference at which wrote off Mr. Tamale Mirundi's allegations as fake utterances. Further that Mr. Tamale Mirundi as well, had admitted that the recordings he usually played on-air were fake.

**(ii) Radio 4**

Mr. Adam Kungu, on behalf of Radio 4 FM 103.3, associated himself with the station's written response as submitted to the Commission. Mr. Kungu admitted that he hosts Mr. Tamale Mirundi every Monday evening. Mr. Kungu noted that Radio 4 observes the Minimum Broadcasting Standards. He added that the station intervenes whenever Mr. Tamale Mirundi uses abusive language including switching off his microphone. He denied any breach of the standards by Radio 4.

**(iii) Kasuku Live**

Mr. Martin Muhumuza, of Messrs Kizito, Lumu & Co. Advocates represented Kasuku Live during the hearing. He noted that his client had furnished the Commission with its written response to the complaint. He apologized on his client's behalf for any violations of the broadcasting laws and regulations that might have occurred on his client's shows. He concluded by appealing to the Commission, as the industry regulator to arrange information session and training for broadcasters to sensitize the industry players on the laws and regulations governing the sector.

**(iv) ABS TV**

Mr. Richard Kimboowa, on behalf of ABS TV also apologised for any violations that could have occurred while his station hosted Mr. Tamale Mirundi.

**(v) HG TV**

Mr. Simon Muyanga Lutaaya speaking on behalf HG TV averred that upon receipt of the complaint, HG TV perused its old content and found that Mr. Tamale Mirundi had mentioned Mr. Odrek Rwabogo only once. But even for that one occasion, he apologised for any violations of the broadcasting laws and regulations that might have occurred in that episode.

He added that HG TV discourages character assassination and called upon fellow broadcasters to restrain Mr. Tamale Mirundi from using their stations to attack personalities.

Mr. Muyanga also implored his fellow broadcasters to desist from hiding behind disclaimers on the views aired not reflecting the views of the station but those of the guest. He noted that broadcasters had a duty to ensure balance, and to restrain their guests if they resorted to abusive language.

**(vi) STV**

Speaking on behalf of STV, Mr. Abdallah Ssekandi, Head of Legal at STV, apologised for any violations that might have occurred while his station hosted Mr. Tamale Mirundi. He noted that since receiving the complaint, STV management had discussed the matter with a view of taking remedial measures.

**3.0 Resolution of the Issues**

Based on the facts of the matter, 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 the Respondent Broadcasters breached the Minimum Broadcasting Standards as enshrined in the Uganda Communications Act, 2013.*

***Issue 3:** Whether an entity can provide broadcasting services without acquiring a license or authorisation issued by the Commission.*

***Issue 4:** What are the rights and remedies available to the parties?*

The issues shall be handled in the order in which they appear above.

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

The mandate of the Commission with respect to hearing and determination of complaints of this nature is anchored in section 5 of the Uganda Communications Act, 2013 which 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.*

This is further expounded in Regulation 39 of the Uganda Communications (Content) Regulations 2019 which 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.

Regulation 4 of the Uganda Communications (Consumer Protection) Regulations 2019 goes on to 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 Regulation 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 the same 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 therefore apparent that the complainants in this matter are consumers of communication services, and they are 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.

This issue is accordingly answered in the affirmative.

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

The complainants alleged that the conduct and content of the Respondent Broadcasters 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 to ensure that all content broadcast through all its programs always complies 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. Odrek M. Rwabogo alleged that the content broadcast by the Respondent Broadcasters contained malicious utterances and unsubstantiated allegations against him. The malicious utterances complained about are that:

- (a) That Mr. Rwabogo engages in human trafficking.
- (b) That Mr. Rwabogo deals in the illegal trade in human organs.
- (c) That Mr. Rwabogo connived to embezzle funds meant for the Presidential and Parliamentary elections campaigns.
- (d) That Mr. Rwabogo has commandeered and holds several sectors hostage including: the beef sector, dairy sector, leather and tanning sector and the fisheries sector.

With respect to the allegation that Mr. Rwabogo engages in human trafficking, the Commission notes that ABS TV, Pearl FM, Radio 4, Kasuku Live through their written representations dated 9<sup>th</sup> May 2022 and HG TV's response dated 16<sup>th</sup> May 2022, all acknowledged that they indeed host Mr. Tamale Mirundi, and in the course of discussing the different topics, he makes several statements about different personalities.

The broadcasters however argued that the statements were not made by their staff, but by Mr. Joseph Tamale Mirundi, a guest to their stations. None of the Respondents however specifically denied that the subject utterances were aired on their respective broadcast platforms.

Similarly, none of the Respondent broadcasters adduced any specific evidence to deny that Mr. Tamale Mirundi made claims during their respective programs that Mr. Rwabogo deals in illegal human organs.

With respect to the other allegations, none of the Respondent broadcasters specifically came out to deny that Mr. Tamale Mirundi made the alleged statements against the complainant.

Having reviewed the content aired by the respective broadcasters during the subject period, the Commission found that Mr. Tamale Mirundi had in a

number of shows, made wild allegations against the person of Mr. Odrek Rwabogo.

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 the respondent broadcaster’s stations, which means that they 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 during different programs on the Respondent broadcaster’s platform, confirms that the Respondents failed to adhere to their legal obligation to prevent the publication of unverified information about any person.

None of the Respondents adduced evidence to prove that the subject allegations against Mr. Rwabogo were indeed factual or that there was any attempt by the respective broadcasters to verify the same.

For Pearl FM, for instance, they even confessed that they would allow Mr. Tamale Mirundi to come to the show with pre-recorded messages, which he would play during the program. The show host further confessed that he did not consider Mr. Tamale’s conduct wrong, since he would play a disclaimer at the end of the program.

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. The Respondent Broadcasters cannot evade culpability for airing the impugned content, merely because the statements were made by guests to their platforms or that they played disclaimer messages during or after the show.

It is the Commission’s finding therefore that the comments that were made during the impugned programs, taken in totality, were in breach of the Minimum Broadcasting Standards as they were broadcast by STV, ABS TV, HG TV, Radio 4, Pearl FM, and Kasuku Live without any evidence to back them up. In addition, each of STV, ABS TV, HG TV, Radio 4, Pearl FM, and Kasuku Live did not dispense with their obligation to establish the correctness and veracity of such statements. STV, ABS TV, HG TV, Radio 4, Pearl FM, and Kasuku Live’s presenters did not even task Mr. Joseph Tamale Mirundi 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 require that programmes that are broadcast are balanced to ensure harmony in such programs.

Reviewing the content complained about that was aired on different dates between 4<sup>th</sup> March 2022 to 4<sup>th</sup> May 2022, the Commission finds that the content as it was broadcast was one sided, and without any balance. The programs contained many unconfirmed allegations (as outlined above) which required balancing by seeking the Complainant's side of the stories before proceeding to broadcast them.

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 a 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 the Respondent Broadcasters decided to broadcast the impugned statements/commentary against the Complainant. Some of the allegations

such as the claims that the Complainant engages in human trafficking, trades in human organs, embezzled funds meant for presidential and parliamentary campaigns and commandeered and holds several sectors hostage needed specific evidence before the broadcaster could right broadcast them.

After carefully reviewing the content (audio and video recordings) submitted to the Commission as evidence, the Commission finds the evidence contained in the recordings was not sufficient to fulfill the aspect of balancing the story.

In broadcasting such content, the Respondent Broadcasters did not take the necessary precaution as required by the Regulations and Standards. Even if Respondent Broadcasters 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 STV, ABS TV, HG TV, Radio 4, Pearl FM, and Kasuku Live should each 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 provisions 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 through 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 significant 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 programs complained about 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 our considered finding that STV, ABS TV, HG TV, Radio 4, Pearl FM, and Kasuku Live each failed to dispense with the obligation of fairness, objectivity and impartiality regarding its content when each 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.

***Issue 3: Whether an entity can provide broadcasting services without acquiring a license or authorisation issued by the Commission:***

Section 27(1) of the Uganda Communications Act, 2013 makes it mandatory for every broadcaster to acquire a broadcasting license issued by the Commission. The section states:

***27. Broadcasting license.***

*(1) A person shall not broadcast without a broadcasting licence issued by the Commission.*

Section 2 of the Uganda Communications Act, 2013 defines “broadcasting” to mean the transmission of sound, video or data intended for simultaneous reception by the public.

From the foregoing definition, Kasuku Live falls within the meaning of broadcasting as defined in the Act. Through Kasuku live, the proprietor of this platform records and disseminates both live and recorded programs, which are distributed on a range of digital platforms, mostly youtube. This platform, for all intents and purposes is used to provide broadcasting services.

There are two broadcasting categories issued by the Commission specifically geared at online broadcasting pursuant to Regulation 12(d) of the Uganda Communications (Licensing) Regulations, S.I. No. 95 of 2019. These are an “Online Data Communications Authorisation” granted pursuant to Item 7 of Schedule 1 Part I (b) of the Uganda communications (Fees and Fines) (Amendment) Regulations, S.I. No. 66 of 2020; and a “Content Service Provider (Online Broadcasting) License” issued pursuant to Item 16 Part I (c) of the same Regulations. Both license categories are specifically tailored towards entities that broadcast entirely over internet protocols.

During the investigation of this complaint, the Commission discovered that one of the Respondent Broadcasters, Kasuku Live engages in provision of online data communications services despite never having acquired an Online Data Communications Authorisation or a Content Service Provider (Online Broadcasting) License issued by the Commission for provision of the said services in Uganda. This is contrary to the Uganda Communications Act, 2013 which makes it an offence for anyone to provide broadcasting services without a license or authorisation.

Based on the evidence on record and the submission by the lawyer who represented *Kasuku live* during the commission proceedings, it is clear that they are fully aware of the obligation to obtain a license but have chosen not to obtain the requisite authorisation or license in accordance with the law.

***Issue 4: What rights and remedies available to the parties?***

The Complainant prayed for the following reliefs in his complaint letter:

- a. That the Respondent Broadcasters pay to the complainant UGX 5,000,000,000/= (Five Billion Uganda Shillings Only) for damages occasioned by offensive communication and defamation to him.
- b. That the Respondent Broadcasters retract the false accusations.
- c. That the Respondent Broadcasters offer a public apology to the Complainant.
- d. That the tribunal reprimands the respondents for breach of Minimum Broadcasting Standards, misconduct, and unprofessionalism.
- e. That the Respondent Broadcasters pay UGX 50,000,000/= (Fifty Million Uganda Shillings Only) for its legal fees.

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 best be 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.

The Commission, therefore, finds that the Respondent Broadcasters breached the Minimum Broadcasting Standards, Standards for General Broadcast Programming in Uganda and the Code of Ethics for Journalists, when they broadcast prohibited content through their respective programs.

### **Guidance to all broadcasters on disclaimers**

In the course of investigating and determining this matter, the Commission has realised that a number of broadcasters operate under a mistaken belief that by playing a disclaimer message, before, during or after a program, wherein broadcasters commonly state that the views expressed during the program or show are those of the guests or panellists and not those of the broadcasting station, this protects them from regulatory and legal liability.

This is clearly wrong. The Commission wishes to make it clear to all broadcasters and individual show hosts and journalists that according to the laws applicable to broadcasting and the media industry in Uganda, as it is elsewhere in the world, a broadcaster is liable for whatever is aired, played, reported or discussed and/or otherwise broadcast during every program at all times. It is irresponsible for any a broadcaster to allow guests, reporters, commentators, and callers to make unverified, unsubstantiated statements against others during broadcast programs. Broadcasters are expected to institute measures to ensure that whatever is said by show guests, callers, advertisers, and other participants in programs comply with the minimum broadcasting standards and other related laws.

With respect to talk shows, all broadcasters are expected to prepare all show guests and warn them against making statements that are not backed by documented evidence. Where an operator invites guests to participate in live or recorded programs, the broadcaster must ensure that the show host is professional and technically competent to restrain the guests and other commentators against swaying into making unsubstantiated claims against persons that are not part of the program.

Broadcasters should not allow any show guest to take control and determine the flow of the program. The broadcaster remains fully responsible for any statement/action committed by guest and other commentators during their programs and the Commission shall not hesitate to institute regulatory sanctions against any errant broadcaster.

### **4.0 Directives on the Implementation of the Decision.**

Based on the findings on issues 1, 2, 3 and 4 hereinabove, the Commission finds the Respondent Broadcasters to have breached the Minimum Broadcasting Standards, Standards for General Broadcast Programming in Uganda and the Code of Ethics for Journalists, through the impugned programs.

WHEREFORE, 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 the Respondent Broadcasters as follows:

1. The Respondent Broadcasters should immediately retract the statements that were made against Mr. Odrek Rwabogo during their respective programs. 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. Each of the Respondent Broadcasters should immediately provide space and time to the Complainant and/or his lawyers for him/them to appear during the same program and offer his side of the story in response to the allegations that were made against the Complainant. This complaint's appearance during the subject shows should be made with an equivalent degree of prominence like the impugned broadcast.
3. Each of the Respondent Broadcasters should prevail upon and implore their guest, Mr. Joseph Tamale Mirundi to desist from his slander campaign against Mr. Odrek M. Rwabogo or stop hosting Mr. Tamale Mirundi if they cannot prevail over him.
4. Each of the Respondent Broadcasters should immediately institute measures to ensure that all content broadcast during all their programs comply with the Minimum Broadcasting Standards and other applicable laws.
5. Each of the Respondent Broadcasters should, in accordance 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 Only) for distributing prohibited content contrary to the Uganda Communications (Content) Regulations 2019.
6. Each of the Respondent Broadcasters should, in accordance 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.
7. Kasuku Live should immediately apply for an appropriate license if it is to continue providing broadcasting services in Uganda. If, for whatever reason(s), Kasuku live fails or omits to submit a complete application for a license within a period of seven (7) days from the date of this decision, the Commission shall impose any appropriate sanctions

against the person(s) behind that broadcasting platform without any further notice, including directing telecom operators to block access to Kasuku Live via their respective networks.

8. Each of the Respondent broadcaster must cause Mr. Tamale Mirundi to sign an unconditional commitment to ensure that whatever he says during the subject broadcast programs complies with the Minimum Broadcasting Standards and all applicable laws and Regulations. If he refuses to sign the commitment, broadcasters should not allow him to appear as a guest during such programs.
9. Each of the Respondent Broadcasters 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 ...29<sup>th</sup>.. day of July 2022



Irene Kaggwa Sewankambo  
**Ag. EXECUTIVE DIRECTOR**

**For and on behalf of the Uganda Communications Commission**



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