

The Sunday paper managed to tuck under its belt countless stories that were profoundly innovative, original, and significantly different from anything that came before them.

BY ROBERT MADOI

Mr Henry Ochieng remembers with a sentimental fondness filing stories for Sunday Monitor. If the title's nose for success was impressive, so was the hatred it inspired. A forceful personality was essential to make a mark in the newsroom, and Mr Andrew Muijuni Mwenda had one. Mr Mwenda's meteoric rise to the top of his profession contrasted starkly with Mr Ochieng's gradual progression. An out-and-out slow burn.

One of the most gifted writers in the trade, Mr Ochieng had to contend with *The Monitor* for a long time. After Onapito Ekomolot had initially convinced Ogen Kevin Aliro, the paper's editor, that the impressionable campuser would serve some purpose in the newsroom, "I would walk from Mitchell Hall [Makerere University] to Dewinton Road to help out however I could," Mr Ochieng, fondly referred to in the newsroom as HO, reminisced.

Only with great difficulty was HO able eventually to have his byline appear in a *Monitor* issue. But this was not before the sports desk snubbed him after Hassan Badru Ziwa deemed his prose too outlandish for what the latter reduced to an unsophisticated audience.

HO agonised over what to do. Soon, he would find his feet on the regional desk where colourful stories from the countryside came to life in his equally colourful prose. But it was when he was working with the Sunday paper that his *Monitor* career scored remarkable triumphs, and he sang over lofty challenges.

"Richard Tebere would put the paper to bed at midday, and by 3pm vendors would be back knocking on the door, asking for more copies after a sell-out," he recalled.

It is easy to see why. The Sunday paper managed to tuck under its belt countless stories that were profoundly innovative, original, and significantly different from anything that came before them. Mr Mwenda wrote the vast bulk of those groundbreaking stories.

False news case

On September 21, 1997, *The Monitor's* Sunday title—with its unmistakably green masthead—screamed from the newsstand: *Kabila paid Uganda in Gold, says report*. Mr Mwenda wrote the story that was passed by Mr Charles Onyango-Obbo, a co-founder of the paper. It was the kind of splash to which State actors would be expected to take offence. So much so that they swiftly would move to have prosecution prefer a charge of false news? Perhaps not. Yet Mr Onyango-Obbo and Mr Mwenda would soon be served with their summons.

The excerpt from the story that the State was vaguely uncomfortable with read thus: "President Laurent Kabila of the newly named Democratic Republic of the Congo (formerly Zaire) has given a large consignment of gold to the Gov-

A paper like no other



Then Daily Monitor staff, including Henry Ochieng (left) celebrate the scrapping of the sedition law in 2010. Mr Ochieng was one of the key writers for *Sunday Monitor*. PHOTO/FILE



A woman reads a copy of Sunday Monitor. PHOTO/ABUBAKER LUBOWA

Another line in the story, supposedly couched in so-called false news, saw the State allocate more urgency and resources to serve as a chastening lesson for *The Monitor*. It read thus: "The Commander of Uganda Revenue's (URA) Anti-Smuggling Unit (ASU) Lt Col Andrew Lutaya, played a key role in the transfer of the gold consignment from the Democratic Republic of Congo to Uganda."

as the prosecution had, petitioned the Constitutional Court under Article 137 of the Constitution.

The joint petition, in the main, sought declarations on two fundamental things. Firstly, that the action of the Director of Public Prosecutions (DPP) in prosecuting them under section 50, was inconsistent with the provisions of Articles 29 (1) (a) and (e), 40 (2) and 43 (2) (c)

The court, however, unanimously ruled that "the DPP's action in prosecuting the appellants was not inconsistent with the Constitution."

By a four to one majority, the court also held that "section 50 is not inconsistent with Article 29 (1)(a) of the Constitution." *The Monitor's* legal team responded to the double bodyblow by lodging an appeal.

James Nangwala, the lead defence counsel, did sufficiently enough to convince the Supreme Court to repeal Section 50 of Uganda's Penal Code. The February 11, 2004 ruling found that the law that hitherto made it a misdemeanour to publish false statements, rumours, or reports was unconstitutional. This was because it was deemed to violate freedom of speech.

In his lead judgment, Justice Joseph Mulenga frowned upon any move to determine falsity. He further contended that not only is it terribly difficult to pigeonhole, but also places a burden that weighs on a publisher heavily.

"Clearly, because of its broad applicability, section 50 lacks sufficient guidance on what is, and what is not, safe to

publish, and consequently places the intending publisher, particularly the media, in a dilemma. In my view, given the important role of the media in democratic governance, a law that places it in that kind of dilemma, and leaves such unfettered discretion in the state prosecutor to determine, from time to time, what constitutes a criminal offence, cannot be acceptable, and is not justifiable in a free and democratic society," the jurist averred in the landmark ruling.

Practical implications

The victory, successfully argued courtesy of a *Sunday Monitor* story that afflicted the comfortable, had important practical implications. Two months before the landmark Mulenga ruling, Aliro sat at his desk in his second floor old *Daily Monitor* building office on a moonless night in December of 2003.

Respected for his intelligence and good judgement, KA—as he was known in *The Monitor* newsroom—enjoyed good health despite taking sadistic delight in a punishing schedule. He stayed up late on this night, as he had done the previous ones, only this time it was to clear his desk. *The Monitor* board had granted his request for early retirement.

In the daytime, light streamed into KA's office through the window that overlooked Eighth Street, Industrial Area, in the outlying backwater of Namuwongo. But now it was night, and the light bulb cast a yellow glow over some of the prints of his office documents.

Shortly, a month after the Mulenga ruling, KA and his other contemporaries, who also stepped down from their respective roles at *The Monitor*, would start *The Weekly Observer* newspaper. I was also coaxed into swapping *The Monitor* for *The Weekly Observer*.

Months later, after reading some of my unedited copy, KA summoned me to his desk. This was always as frightening a prospect as reading his poker face.

"You write well," KA started, "but I want you to hold power accountable. That is the very essence of good journalism. I'm sure you are also aware that the recent Supreme Court ruling has allowed us to push the envelope. You can criticize."

Justice Mulenga, as a matter of fact, professed: "The substance of ground 3 is criticism of the construction of section 50. The gist of the criticism is that the section is too imprecise for a penal legislation. I must say that much of the criticism is quite valid. Precision and clarity in the definition of a criminal offence is essential, if a person accused of the offence is to have a fair trial."

The jurist also reasoned that, in politics where leaders are stingy with information, rumours or so-called false news prompts conversations.

"A democratic society respects and promotes the citizens' individual right to freedom of expression, because it derives benefit from the exercise of that freedom by its citizens. In order to maintain that benefit, a democratic society chooses to tolerate the exercise of the freedom even in respect of demonstrably untrue and alarming statements, rather than to suppress it."

As the sun sets on *Sunday Monitor* today, the newspaper will live forever in the annals of a pathfinder. It blazed a trail for others to follow, bringing more

KEY INFORMATION

1 Launch. The *Sunday Monitor* newspaper was launched on November 10, 1996.

2 Top story. One of them was written by Andrew Mwenda and published on September 21, 1997, *Kabila paid Uganda in Gold, says report*. The government, however, flagged it as false news.

3 Writers and editors. Some of the writers included Henry Ochieng, alias HO, Andrew