

**REPUBLIC OF KENYA**

**IN THE MATTER OF THE MEDIA COUNCIL ACT [2013]**

**AND**

**IN THE MATTER OF THE COMPLAINTS COMMISSION**

**COMPLAINT NO. 18 OF 2014**

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LTD.....COMPLAINANT**

**VERSUS**

**NATION MEDIA GROUP LIMITED.....1<sup>ST</sup> RESPONDENT**

**ZEDDY SAMBU..... 2<sup>ND</sup>RESPONDENT**

**JUDGEMENT**

**Introduction**

1. The Complainant herein, Kenya Tea Development Agency Holdings Limited, was aggrieved by an article published on 29<sup>th</sup> June 2014 by the Sunday Nation Newspaper, a publication of the Nation Media Group Limited ( hereinafter referred to as the 1<sup>st</sup> Respondent) . The article titled “**How KTDA Steals From Small Farmers**” was written by Zeddy Sambu (hereinafter referred to as the 2<sup>nd</sup> Respondent) appeared as a front page statement on page 1, and was published on pages 40 and 43 of the said paper. The acronym KTDA, as used in this complaint, refers to the Kenya Tea Development Agency holdings Limited .
2. In support of the complaint, the Complainant attached copies of the following documents;
  - a. The article appearing on pages 1, 40 and 43 of the Sunday Nation Newspaper of 29<sup>th</sup> June 2014
  - b. KTDA letter dated 30<sup>th</sup> June 2014 addressed to the Tea Board of Kenya
  - c. The Tea Board of Kenya letter dated 1<sup>st</sup> July 2014 addressed to KTDA
  - d. The Tea Board of Kenya letter dated 1<sup>st</sup> July 2014 addressed to the East Africa Tea Trade Association
  - e. Letter to the Nation Media Group Limited dated 2<sup>nd</sup> July 2014 demanding an apology and responding to the issues raised in the article

3. The Complainant sought an apology and correction to be published with as much prominence in the Sunday Nation as the article complained of.
4. The Respondents were duly served with the Notice of Complaint but did not file a Response nor attend any proceedings before the Commission as is required by law.
5. In admitting the Complaint ruling the Commission invoked provisions of Rule 17 of the Media Complaints Commission Rules of 2009 and proceeded to hear the matter ex parte.
6. The Complainant relied on the testimony of two witnesses Mr. Ken Omanga hereinafter CW-1 and Mr. Albert Otochi CW-2.

### **The Complainant's Case**

#### **Testimony of CW-1**

7. Mr Ken Omanga (CW-1) testified that he worked as the Corporation Secretary at KTDA. He testified that KTDA manages fifty Four (54) Tea factories and has a number of subsidiaries including Ketepa, Chai Trading Company Limited and Majani Insurance Brokers. CW-1 further stated that KTDA is owned indirectly by 600,000 tea farmers spread out in 17 counties and that KTDA markets tea from factories through a management agreement. He stated that tea is the highest foreign exchange earner for the country bringing in approximately **\$120,000,000**. He stated that they were aggrieved by the article published by the Respondents because it was not only misleading, incomplete, inaccurate, inflammatory, biased, defamatory and libelous, but it would also lead to loss of confidence, in KTDA and the small holder tea farmers, by both local and global partners. He averred that the report was calculated to create the impression that KTDA was complicit in unethical trading practices including price manipulation, and collusion with brokers to con small farmers.
8. He testified that the Tea Industry status report of May 2014 quoted in the article allegedly published by the Tea Board of Kenya did not exist as the Tea Board of Kenya had denied sharing such a report with the Respondents. He stated that no such report could because the Tea Board of Kenya would only generate periodic reports with statistics of how much tea is produced and how much is sold at the auction and that in his twelve (12) years of service in the industry the Tea Board of Kenya has never released a report such as the one referred to in the article. in any event industry reports are undertaken by the parent ministry and that the issues cited in the article fall under the domain of the Competition Authority and not

the Tea Board of Kenya.

9. Mr Omanga added that the via demand letter dated 2<sup>nd</sup> July 2014 the Complainant asked the Respondent to publish a retraction of the story and to be furnished with a copy of the said report, but the Respondents declined to furnish the Complainant with the report nor respond to the issues raised in the demand letter.
10. In conclusion he stated that people interested in becoming managing agents for tea auctions may have caused the publication of the article in order to destroy the image of the Complainant.
11. He prayed for the reliefs as sought.

### **Testimony of CW-2**

12. Mr Albert Otochi (CW-2) testified that he was the Managing Director of KETEPA subsidiary of the complainant and that he is also the Chairman of the East Africa Tea Association(EATA)previously served as the sales and marketing agent of the Complainant. He stated that his role as marketing and director was to oversee the selling of tea which was sold through auction and directly to overseas consumers. He reiterated that the KTDA is owned by over 650,000 small scale traders spread across the country and that Tea is the leading foreign exchange earner contributing to 4 % of the country's GDP. He averred that despite having successfully managed the small holder tea sector for fifty (50) years, the article had portrayed them as thieving, unethical, unreliable and untrustworthy, and that the publication of pictures of the KTDA management and KTDA Holdings directors, was meant to depict them as those behind the unethical trade practices referred to in the said article.
13. Mr Otochi explained how tea produced in factories is sent to Mombasa through an appointed broker, valued and catalogued and taken through an open bidding process where the highest bidder makes the purchase and that at all material times brokers were at liberty to withdraw from the auction if they did not get the price they wanted and therefore there was no room for collusion and or mischief. He stated that that he believed that the 2<sup>nd</sup> Respondent was assigned to cover Tea stories on behalf of the 1<sup>st</sup> Respondent and referred to email exchanges between himself and the 2<sup>nd</sup> Respondent confirming that any queries the 2<sup>nd</sup> Respondent had, were answered, however in this instance the 2<sup>nd</sup> Respondent never sought clarification, verification or comment on the Tea Industry report quoted in the impugned article. He added that since none of the other relevant stakeholders such as the parent ministry and the Tea Research Institute were aware of such a report it did not exist.

14. He prayed for the reliefs as sought.

**Determination.**

15. The Respondent having failed to file any documentation in rebuttal renders the Complainant's evidence as uncontroverted. In the absence of any rebuttal the Respondent's liability is admitted on the strength of the complaint having been deemed admissible on account of a prima facie breach of the Code of Conduct for the Practice of Journalism Set out in the Media Council Act 2013. Further the Commission is persuaded by the case cited by the Complainant of **Trust Bank Limited –vs- Universal Bank Limited & 2 Others [2009] eKLR where the Court held in part.... “In the same vein failure to adduce any evidence meant that adduced by the plaintiff against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants was uncontroverted and therefore unchallenged.....”**

16. The Complainant's witnesses stated that they were never given a chance to comment on the contents of the offending publication. The onus was on the Respondent to strictly adhere to the Code more so Clause 2(1) (2) (3) which requires a publisher to write a fair, accurate and unbiased stories while reporting all sides of the story wherever possible.

17. Clause 2(3)of the Code requires that comments be sought from anyone who is mentioned in an unfavourable context and evidence of such attempts to seek the comments are to be kept. It is the Commission's view that this threshold had been intentionally, deliberately or recklessly omitted by the Respondents resulting into publication of the offending article.

18. The Commission adopts and is persuaded by the Complainant's submissions.

**Order**

**19.** In the result the Complaint dated 8th July, 2014 succeeds and the Respondent is found to have breached Clause[s] 2(1) (2) (3) of the Code. Accordingly the Respondent is ordered pursuant to Section 38(1) (a) of the Media Council Act to publish an apology as per the Complainant's prayers. Further, the 1st Respondent is ordered pursuant to Section 31(1)(f) to pay a fine of Two Hundred Thousand Shillings (Kshs 200,000/=) for having violated the Code, whereby the fine is due to the Media Council of Kenya pursuant to Section 38(1)(f).

**Dated at Nairobi this**  
**day.....of.....2017**

Before

**ESTHER ADUMA- VICE CHAIRPERSON**

**HENRY MAINA- MEMBER**

**KWAMBOKA OYARO- MEMBER**

**Delivered in the presence of:**