

REPUBLIC OF KENYA
IN THE MATTER OF THE MEDIA COUNCIL ACT [2013]
AND
IN THE MATTER OF THE COMPLAINTS COMMISSION
COMPLAINT NO. 10 OF 2013

NATIONAL BANK OF KENYA.....COMPLAINANT

VERSUS

BUSINESS DAILY.....RESPONDENT

JUDGEMENT

Introduction

1. The Complainant filed a complaint dated 11th September, 2013 being aggrieved by the Respondent's publication of a report on 19th August, 2013 in the Business Daily newspaper with a title heading " **Theft of papers sparks war in NBK Boardroom**" which title the Complainant deems to be false, inflammatory and misleading. In his complaint the Complainant sought the following remedies:
 - a) An apology and a retraction of the publication in words acceptable to the Complainant and given similar prominence as the publication complained of.
 - b) Once the apology is agreed upon the issue of quantum and damages payable to the Complainant be discussed.
 - c) Any other remedy that the Complaints Commission deems fit to grant.

The Complainant's Case

2. The Respondent failed to file any response to the complaint necessitating the case to proceed ex parte formal proof by the Complainant's witnessess. The Complainant relied on the testimony of Mr. Habil Waswani, the Director Legal and Secretarial Services of the Complainants' firm. He stated that his attention was drawn to the publication which was not factual or accurate as the Respondent never sought for clarification nor give him an opportunity to comment on the same prior to publication.
3. He reiterated that the Complainant firm was the custodian of a huge portfolio of funds which was entrusted to the Board to prudently manage. He averred that the publication in question was likely to cause alarm amongst their clients as to the firm's ability to undertake managerial functions with due diligence. The Complainant produced a copy of the offending

publication marked (MF1: Exh:1)

Determination.

4. 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 [2013].
5. The Complainant's witness stated that he was 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.
6. Lastly, it is required 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 Respondent resulting into publication of the offending article. The Commission adopts and is persuaded by the Complainant's submissions.

Order

7. In the result the Complaint dated 11th September, 2013 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 Respondent media enterprise is condemned 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 15th of December 2014

HON. (MR.) W O OKETCH
COMMISSIONER

Delivered in the presence of:

Ms Odera instructed by Messrs Miller Company Advocates: for the Complainant.
Mr. E M Ngairs, Ag. Registrar