

REPUBLIC OF KENYA
IN THE MATTER OF THE MEDIA COUNCIL OF KENYA ACT (2013)
AND
IN THE MATTER OF THE MEDIA COMPLAINTS COMMISSION
COMPLAINT NO. 11 OF 2023.

JOHNSON OTIENO ADERA **COMPLAINANT**

-VS-

NATION MEDIA GROUP PLC **1ST RESPONDENT**

HEAD OF CONTENT NATION MEDIA GROUP **2ND RESPONDENT**

PETER MBURU **3RD RESPONDENT**

RULING ON ADMISSIBILITY

THE COMPLAINT

1. The Complainant is **JOHNSON OTIENO ADERA**, a Kenyan Citizen and the Director of Legal Services at the Anti-Counterfeit Authority (ACA), a state corporation created under the Anti-Counterfeit Act.
2. The 1st Respondent is a Newspaper operated by **NATION MEDIA GROUP PLC** in the Republic of Kenya.
3. The 2nd Respondent is an employee of the 1st Respondent and is designated as the **HEAD OF CONTENT**.
4. The 3rd Respondent is **PETER MBURU**, an employee of the 1st Respondent and the person attributed to having written the impugned story.
5. Through a complaint dated 28 August 2023, and filled with the Media Complaints Commission, the complainant states that on 14 March 2023, the 1st, 2nd and 3rd Respondents caused to be published on their website and newspaper an article headlined, “*Anti-Counterfeit Agency faces Sh600m Botched Seizure Bill*,” which according to the complainant, was misleading.
6. The complainant avers that the article violated the Code of Conduct for the Practice of Journalism in Kenya under Clause 2 (1), 4 (1) and 6 (1) regarding Accuracy and Fairness, Integrity, and Opportunity to Reply respectively.

RESPONDENT’S STATEMENT OF RESPONSE

7. In their joint Statement of Response, the 1st, 2nd and 3rd Respondents, through their advocate, deny every singular allegation made by the Complainant.

8. Respondents agree that they published the article dated 14 March 2023, however, they deny that the words quoted were attributed to the Complainant.
9. The Respondents further state that the article was based on Court proceedings relating to the seizure of goods by the Anti-Counterfeit Agency in a matter of public importance and in the public domain.
10. The Respondents further state that they published the article out of a sense of public duty and without malice to the Complainant published as fair information in the public interest. Moreso, they admit that the article was also published online.
11. Moreover, the Respondents state that they took all reasonable care and did not know nor had any reason to believe that the publication would create a bad impression on the part of the Complainant's employer.
12. The Respondents also claim that the impugned quotes were published on a privileged occasion and out of public necessity. Moreover, they reiterate that it was a fair commentary with no intention to malign or inflict distress, harm, or embarrassment on anyone.
13. The Respondent concludes that the complaint be dismissed.

THE COMMISSION'S DETERMINATION

14. Under section 35 (3) the Commission must conduct a preliminary assessment of the Complaint to determine the admissibility or otherwise of the Complaint lodged. The Commission is expected to determine where the Complaint raises triable issues.
15. The Commission relies on Sections 31 (a) and (b) of the Media Council Act 2013, which grants it jurisdiction to receive, investigate and deal with media-related complaints against journalists or media enterprises on ethical issues. The issues complained of emanated from a publication by the Respondents, which Complaint was made pursuant to Section 34 (1) (a) of the Media Council of Kenya Act 2013, which provides that;

A person aggrieved by any publication or conduct of a journalist or media enterprise ... may make a written complaint to the Complaints Commission setting out the grounds for the complaint, nature of the injury or damage suffered, and the remedy sought.
16. Section 34 (1) of the Media Council Act 2013 provides for the Complaint, as an aggrieved party, to write to the Complaints Commission.
17. The 1st, 2nd and 3rd Respondents are a media enterprise, head of content and journalist respectively. All three are squarely within the mandate of the Commission as envisaged under Sections 31 and 34 of the Act.
18. The issues raised by the Complainant but denied by the Respondent alleging breach of the Code of Conduct for the Practice of Journalism can only be adequately interrogated and determined by mediation or adjudication involving both parties.

19. The law, therefore required the Complainant to display triable issues on the substance of the Complaint to qualify for further consideration, as provided for in the Act.
20. The Commission is satisfied that the Complaint is admissible for the merit hearing and deserves to proceed for further consideration through mediation or adjudication.

ORDERS OF THE COMMISSION

21. The Commission accordingly is of the opinion that on the balance of probability, there is a *prima facie* case alleging breach of the Code of Conduct for the Practice of Journalism in Kenya, which is arguable and ought to be heard to a conclusion either through mediation or adjudication. The matter is hereby admitted.

It is so ordered.

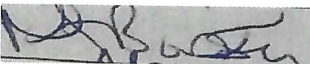
DATED and DELIVERED at NAIROBI this 2ND Day of OCTOBER 2023.



**WILLIAM OKETCH, OGW
CHAIRMAN, MEDIA COMPLAINTS COMMISSION**



**ESTHER ADUMA, OGW
VICE-CHAIR, MEDIA COMPLAINTS COMMISSION**



**PROF. NANCY BOOKER
COMMISSIONER, MEDIA COMPLAINTS COMMISSION**



**HENRY MAINA
COMMISSIONER, MEDIA COMPLAINTS COMMISSION**



**POLLY GATHONI
COMMISSIONER, MEDIA COMPLAINTS COMMISSION**



**DEMAS KIPRONO
COMMISSIONER, MEDIA COMPLAINTS COMMISSION**



LEMPAA SUYIANKA
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

