

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 4 OF 2024

JOSEPH ONCHONGA KINANGA1ST COMPLAINANT

VS

MWAMOGUSII TV1ST RESPONDENT

DENIS ONYAMO2ND RESPONDENT

HEAD OF CONTENT, MWAMOGUSII TV.....3RD RESPONDENT

RULING ON ADMISSIBILITY

BACKGROUND

1. **Joseph Onchonga Kinanga** filed a complaint with the Complaints Commission on 12th September, 2024, against the 1st, 2nd, and 3rd respondents. This complaint arises from an interview conducted by Mr. **Denis Onyamo** on the 1st Respondent's You tube Channel on 21st July, 2021 entitled '**Amuua mamake kwa kumsingizia ni mchawi (Suneka Bonuendo)**'.

2. The complainant alleges that the content of this interview was misleading, inflammatory and done without the consent and knowledge of the Complainant. That the Complainant did not get a chance to give his side of the story.

3. The interview therefore breached the Code of Conduct for the Practice of Journalism in Kenya. The interview breached Clause 2(1) on Accuracy and Fairness, Clause 4 on Integrity, Clause 6 on Opportunity to Reply, Clause 12 on Covering Ethnic, Religious and Sectarian Conflict.

4. Pursuant to section 35 (1) of the Media Council Act the Complaints Commission issued a notice of the complaint to the Respondents

5. In their statement of response dated 24th October 2024, the Respondents denied all allegations made by the complainant and averred that the Complaint is full of falsehood and its intention is to tarnish the good image of Mwamogusii Tv and themselves.

6. That the 2nd Respondent received a call 3 years earlier from one of their Tv fans in the United States of America one **Mary Mariita & Eileen Marita** who are auntie and cousin respectively to Joseph Onchonga Kinanga, the Complainant herein with instructions to go to her home to cover a case whereby the Complainant had been accused of allegedly killing his own mother with an allegation of witchcraft. The Respondents further argued that the doctrine of neutral reportage imposes an

obligation to report on matters of public interest while maintaining neutrality, thus precluding the need to take sides or challenge the statements made during the interview.

7. That upon arrival at the home of the Complainant the 2ND Respondent met the Complainant's brother, one **Mr. Lawrance Kinanga** and upon brief introduction and the purpose of the visit he was the 1st to accept to be interviewed and that it was the Complainant's confession that he was convinced that the Complainant was a suspect and behind their mother's death. He proceeded narrating that the Complainant and the mother had differences where the mother refused to let the Complainant sell land.

8. That the Respondent further avers in his affidavit that he did another interview from the Complainant's stepsister, **Elmerida Nyaboke Kinanga** who reiterated **Mr Lawrance Kinanga's** allegations

9. In conclusion the 2nd Respondent stated that he had never received a call from the Complainant regarding the subject matter as alleged and that the Complainant had never made an effort to find out the source of information from the Respondents yet he saw the clips on YouTube showing that the source of allegations were very close relatives of the Complainant.

10. That the Respondent prayed that the complaint be dismissed as it lacked merit.

THE COMMISSION'S ASSESSMENT

11. Under section 35 (3) the commission is required to conduct a preliminary assessment of the complaint to determine the admissibility or otherwise of the complaint lodged. the commission is expected to determine whether the complaint has raised triable issues

12. It is noteworthy that Section 35 does not outline specific criteria for the admission of a complaint, apart from the requirement that the complainant alleges being aggrieved by the conduct of a journalist or media enterprise. Nonetheless, as a matter of practice, the Commission aims to ensure that:

- a) The complaint satisfies the requirements outlined in Section 34(1)(a) of the Act.
- b) No similar proceedings are currently pending in any court of law concerning the same matter.

13. 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 an interview conducted and aired by the Respondents, which complaint was made under 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.

14. The 1st Respondent is a Media Enterprise, the 2nd Respondent is a journalist, and the 3rd Respondent is the Head of Content. All three individuals and the entity fall squarely within the mandate of the Commission as outlined in Sections 31 and 34 of the Act.

15. As such, the complaint meets the requirement of section 34(1)(a) of the Media Council Act, as alleges that he is aggrieved by the conduct of the Media enterprise and the journalists. The allegations of ethical breaches and the negative impact of the statements made during the interview warrant investigation.

16. The complaint raises significant issues related to journalistic ethics, specifically the responsibility of journalists and media enterprises to uphold standards of fairness and accuracy, particularly when reporting on individuals in a potentially adverse light. The Commission will therefore proceed to interrogate these matters further to determine whether the conduct in question met the ethical standards as provided for in the Media Council Act.

ORDERS OF THE COMMISSION

17. The commission finds that on a balance of probability, there is a Prima facie case in the complaint alleging Breaches or violations of the Media Council Act 2013 and/or the code of conduct for the practice of journalism in Kenya and is of the view that the complainant has raised triable issues that ought to be heard on merit before the Commission as contemplated in section 31 of the Act.

The complaint is hereby admitted

DATED and DELIVERED at NAIROBI this.....14THof ...November.....2024



MR. DEMAS KIPRONO

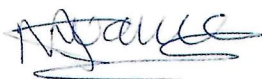
CHAIRPERSON, MEDIA COMPLAINTS COMMISSION

I Certify this to be a True copy
of the Original
Sign: Date: 19th November 2024
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MS. POLLY GATHONI

VICE- CHAIR, MEDIA COMPLAINTS COMMISSION



MR. KANTIM MWANIK

COMMISSIONER, MEDIA COMPLAINTS COMMISSION



MS. NASSRA HUSSEIN OMAR
COMMISSIONER, MEDIA COMPLAINTS COMMISSION



MR. MASEME MACHUKA
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

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