

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

MINISTRY OF INFORMATION,
COMMUNICATION AND THE
DIGITAL ECONOMY

COMPLAINANT

V.S

MEDIAMAX/THE PEOPLE DAILY NEWSPAPER1st RESPONDENT

HEAD OF CONTENT.....2nd RESPONDENT

RULING ON ADMISSIBILITY

THE COMPLAINT

1. The Complainant is the **MINISTRY OF INFORMATION, COMMUNICATION AND THE DIGITAL ECONOMY**.
2. The 1st Respondent is a newspaper called **THE PEOPLE DAILY NEWSPAPER**, which **MEDIAMAX NETWORK LIMITED** operates.
3. The 2nd Respondent is an employee of the 1st Respondent and works as the Head of Content at the **PEOPLE DAILY NEWSPAPER** operated by **MEDIAMAX NETWORK LIMITED**.
4. The Complainant lodged the complaint on 6th September 2024 through a letter signed by the Principal Secretary of the Ministry of Information, Communication and the Digital Economy, **EDWARD WASWA KISLANG'ANI**, against the 1st and 2nd Respondents regarding a story published by The People Daily newspaper under the headline "**HOW RUTO LIES KILLED NITHI 12.**"
5. The Complainant stated that the headline was supported by grossly inaccurate text, directly attacking the President and depicting him as a liar whose actions caused the deaths of 12 individuals. The complainant further argued that this story involved serious disrespect and false accusations directed at both the person and the office of the President. The Complainants further alleged that the article violated the ethical standards required of journalists, portraying The People Daily as a harmful tool of hate and disrespect.
6. Pursuant to Section 35(1) of the Media Council Act, the Complaints Commission issued a notice of the complaint to the Respondents.

RESPONSE BY 1ST AND 2ND RESPONDENTS

7. In their response statement dated 28th October 2024, the 1st and 2nd Respondents denied breaching the code of conduct governing journalism practice. They also noted that the complaint had not been submitted through the standard Complaint Form, as required by the Commission's practice and procedure, but instead through a letter from the Principal Secretary of the Ministry of Information, Communication, and the Digital Economy.
8. The 1st and 2nd Respondents further asserted that the Notification of Complaint, prepared by the Registrar on behalf of the Complaints Commission, appeared to convert the Ministry's letter into a formal complaint. They expressed concern that this action could indicate a pre-determined outcome if the Complaint were to proceed to a hearing (if any).
9. The 1st and 2nd Respondents further argued that, under section 27 of the Act, the Complainant's office appoints the Chairperson and Members of the Complaints Commission. Consequently, they expressed apprehension that the Complaints Commission may face a conflict of interest if it were to hear the Complaint initiated by the Principal Secretary.
10. The 1st and 2nd Respondents reiterated that the publication was made as a matter of high-interest public interest and that, at all times, the Respondents adhered to the Code of Conduct for the Practice of Journalism.
11. In conclusion, the Respondents prayed the Complaint to be dismissed with costs.

THE COMMISSION DETERMINATION

12. 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.
13. Section 34(1) A person aggrieved by— (a) any publication by or conduct of a journalist or media enterprise in relation to this Act; or (b) anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such 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. Section 34(2) A complaint under section 31 may be made— (a) orally, either in person or by any form of electronic communication; or (b) in writing, given to the Registrar of the Complaints Commission setting out the grounds for the complaint, nature of the injury or damage suffered, and the remedy sought.
15. The Media Council Act does not specify the form to be filled in by a Complaint so long as it meets the requirements of section 34(1). The Complaint form is meant to be a guide on the details that must be included in a Complaint to meet the threshold set out in section 34(1).
16. Further, Section 35(1) provides that, "upon receipt of a complaint, the Complaint Commission shall notify, in writing, the party against whom the complaint has been made, within fourteen days of receipt

of the complaint, stating the nature of the complaint, the breach, act or omission complained of and the date on which the matter shall be considered by the Commission.”

17. The Notification, as drafted by the Registrar, duly notified the first and second Respondents of the complaint by the Complainant. The notification did not reframe the complaint, which was also copied to the 1st and 2nd Respondents.
18. The Respondents also stated that they were apprehensive that the Commission may be Conflicted in handling this Complaint because the Commission’s appointing authority prompts it.
19. It should be noted that the Media Complaints Commission was created by statute to deal with all complaints against journalists and media enterprises, including those from the government. Section 31 of the Media Council Act of 2013 reads as follows:

The functions of the Complaints Commission are to—

- a. mediate or adjudicate in disputes between the government and the media and between the public and the media and intra-media on ethical issues;*
- b. ensure the adherence to high standards of journalism as provided for in the code of conduct for the practice of journalism in Kenya; and*
- c. achieve impartial, speedy and cost-effective settlement of complaints against journalists and media enterprises, without fear or favour in relation to this Act.*

As stated above, the MCC is created and mandated to adjudicate or mediate disputes between the government (such as the Ministry of Information here) and the media.

20. Furthermore, Section 30 guarantees the independence of the Complaints Commission, which provides the duty that the Commission exercises judiciously. The section reads as follows:

In performing its functions or exercising its powers, the Complaints Commission shall be independent in its operations and shall be guided by the provisions of Article 159 of the Constitution.

21. In exercising its independence, the Commission is further guided by the Bangalore Principles of Judicial Conduct and the 1985 United Nations Basic Principles of the Independence of the Judiciary. Particularly that:

“the judiciary shall decide matters before it impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect from any quarter or for any reason.”

22. Section 35(3) requires the Commission to conduct a preliminary assessment to determine the admissibility or otherwise of the complaints lodged within fourteen days upon receipt of the submissions from both the Complainant and the Respondent to determine whether the Complaint is admissible or within the Commission’s jurisdiction.
23. The 1st Respondent is a media enterprise, and the 2nd Respondent is the Head of Content. Both the individual and the entity fall squarely within the Commission’s mandate, as outlined in Sections 31 and 34 of the Act.

24. The complaint meets the requirements of Section 34(1)(a) of the Media Council Act, as it alleges that the conduct of the media enterprise and the journalists aggrieve the complainant. The allegations of ethical breaches and the negative impact of the statement carried in the newspaper article warrant investigation and determination.
25. The complaint satisfies the requirements outlined in Section 34(1)(a) of the Act

ORDERS OF THE COMMISSION

26. 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. It is of the view that the complainant has raised triable issues that ought to be heard on merit before the Commission, either through mediation or adjudication.

The Complaint is hereby admitted.

DATED and DELIVERED at NAIROBI this.....14th.....of ...November.....2024

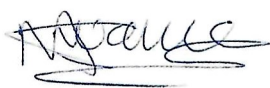


MR. DEMAS KIPRONO
CHAIRPERSON, MEDIA COMPLAINTS COMMISSION

I Certify this to be a True copy
of the original
Sign:  Date: 14 November 2024
REGISTRAR
COMPLAINTS COMMISSION
www.complaintscommission.or.ke
P.O. BOX 43132 - 00200, NRB



MS. POLLY GATHONI
VICE- CHAIR, MEDIA COMPLAINTS COMMISSION



MR. KANTIM MWANIK
COMMISSIONER, MEDIA COMPLAINTS COMMISSION



MS. NASSRA HUSSEIN OMAR
COMMISSIONER, MEDIA COMPLAINTS COMMISSION


Maseme Machuka

MR. MASEME MACHUKA
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

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