

REPUBLIC OF KENYA

IN THE MATTER OF THE MEDIA COUNCIL ACT, 2013

AND

IN THE MATTER OF THE MEDIA COMPLAINTS COMMISSION

MEDIA COMPLAINTS COMMISSION CASE NO. 15 OF 2024

NICO OTIENO NISSEN MAGATHER COMPLAINANT

VERSUS

NATION MEDIA GROUP LIMITED 1ST RESPONDENT

EDITOR, DAILY NATION2ND RESPONDENT

DETERMINATION

A. INTRODUCTION

1. This complaint relates to the publication of a photograph in the *Daily Nation* newspaper of 18th January 2024.
2. The Complainant alleges that the photograph was published without his consent and in a manner that was misleading, intrusive, and violative of his dignity.
3. The complaint was admitted for hearing following a ruling on admissibility delivered on 17th January 2025. The Complainant, appearing **in propria persona**, elected to give viva voce evidence and relied on the complaint as filed for closing submissions. The Respondents filed written submissions in response and did not call any witnesses
4. The Commission has considered the pleadings, evidence, submissions, the Media Council Act, 2013, and the Code of Conduct for the Practice of Journalism in Kenya (the Code).

B. THE COMPLAINANT'S CASE

5. The Complainant contends that the Respondents published his image alongside the caption "*KENYANS CONTINUE FEELING THE PINCH OF HIGH FUEL COSTS,*" which he alleges conveyed a misleading and disparaging impression.

6. He submits that the image, depicting him walking, falsely implied that he was compelled to do so due to economic hardship occasioned by high fuel prices.
7. The Complainant further argues that the Respondents appropriated and used his image without consent, thereby infringing his constitutional rights under Articles 28 and 31 of the Constitution of Kenya, 2010.
8. He maintains that the portrayal, including the depiction of worn-out shoes, amounted to an unwarranted intrusion into his privacy and dignity and exposed him to ridicule and adverse public perception.
9. The Complainant asserts that the image was taken without his knowledge or consent and subsequently contextualized in a manner that was inaccurate and not reflective of his personal circumstances, contrary to the Code.
10. He sought a public apology and a clarification.

C. THE RESPONDENTS' CASE

11. The Respondents raised a Preliminary Objection dated 30th November 2024, which they maintained in their submissions of 10th January 2025, challenging the competence of the complaint.
12. They contend that the complaint does not disclose any breach of the Code and is instead premised on alleged violations of the Data Protection Act, matters falling outside the Commission's mandate.
13. Without prejudice to the Preliminary Objection, the Respondents submit that the photograph was taken in a public place during lawful newsgathering and was used illustratively in reporting on a matter of public interest.
14. They further submitted that the Complainant was not identified and that no reasonable reader would have construed the publication was making any specific claim about him. The Respondents maintain that the publication was protected under Article 34 of the Constitution and complied with journalistic standards.

D. ISSUES FOR DETERMINATION

15. From the foregoing, the Commission has crystallized the following issues for determination:

- a) Whether the publication of the image without consent breached the Code;
- b) Whether the image and caption amounted to misleading or unfair presentation;
- c) Whether the publication violated the Complainant's right to privacy and dignity; and
- d) Whether the remedies sought are warranted.

E. THE COMMISSION'S ANALYSIS

a) Whether the publication of the image without consent breached the Code

16. Clause 6 of the Code requires consent primarily in circumstances involving non-public settings or unjustified intrusion.
17. The Commission has consistently held that photography undertaken in public places for legitimate journalistic purposes does not ordinarily require prior consent (MCC Complaint No. 12 of 2021, *John Mwangi v. Royal Media Services Ltd*).
18. Further, the absence of consent alone is insufficient to establish a breach of the Code in the absence of evidence of harassment, deception, or targeted pursuit (MCC Complaint No. 7 of 2020, *Achieng Ochieng v. Standard Group PLC*).
19. In the present complaint, no such evidence was placed before the Commission. The Commission therefore finds no breach of Clause 6 of the Code.

b) Whether the image and caption amounted to misleading or unfair presentation

20. The Commission has previously affirmed that illustrative images may be used in reporting on matters of public interest, provided they do not attribute specific facts or circumstances to identifiable individuals (MCC Complaint No. 3 of 2019, *Peter Kaman v. Nation Media Group Ltd*).
21. The caption in issue referred generally to the impact of fuel costs on Kenyans.
22. The Complainant was not named or otherwise identified, and no factual assertion was made regarding his personal circumstances.
23. Applying the reasonable reader test adopted by the Commission (MCC Complaint No. 9 of 2022, *Fatuma Ali v. Mediamax Network Ltd*), the Commission is not satisfied that the image and caption conveyed a misleading or definitive assertion about the Complainant.

c) Whether the publication violated the Complainant's right to privacy and dignity

24. Clause 4 of the Code protects individuals from unjustified intrusion and demeaning portrayal.
25. The Commission has held that subjective offence, without objective evidence of humiliation or ridicule, is insufficient to establish a violation of dignity (MCC Complaint No. 5 of 2018, *Samuel Kibet v. Radio Africa Group Ltd*).
26. Dignity must be assessed objectively, taking into account context, audience perception, and proportionality (MCC Complaint No. 14 of 2021, *Grace Wanjiru v. Kenya Broadcasting Corporation*).
27. In this matter, the photograph depicted the Complainant in a public setting and did not disclose private facts or subject him to ridicule beyond that ordinarily incidental to public reportage.
28. The Commission finds that the Respondents acted within the bounds of editorial discretion contemplated under the Code.

d) Whether the remedies sought are warranted

29. Having found that the publication of the image did not contravene Clause 6 of the Code; that the image and caption did not constitute misleading, inaccurate, or unfair presentation under Clause 1; and that the Complainant's right to privacy and dignity under Clause 4 was not violated, the Commission concludes that the Complainant is **not entitled to the remedies sought**

F. CONCLUSION

30. In light of the foregoing, the Commission finds that the complaint is without merit
31. The complaint is hereby **DISMISSED**.
32. No order as to costs

DATED and DELIVERED at NAIROBI this5th .. day ofFebruary.....2026.


MR. DEMAS KIPRONO
CHAIRPERSON, MEDIA COMPLAINTS COMMISSION

I Certify this to be a True copy
of the Original
Sign:  Date: **15 Feb 2026**
REGISTRAR
COMPLAINTS COMMISSION
www.complaintscommission.or.ke
P.O. BOX 43132 - 00200, NRB

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Sign: *A. Banda* Date: *5th Feb 2026*

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COMPLAINTS COMMISSION
www.complaintscommission.or.ke
P.O. BOX 43132 - 00200, NRB

Polly

MS. POLLY GATHONI
VICE- CHAIR, MEDIA COMPLAINTS COMMISSION

Kantim Mwanik

MR. KANTIM MWANIK
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

Nasra Hussein Omar

MS. NASRA HUSSEIN OMAR
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

Maseme Machuka

MR. MASEME MACHUKA
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

Lucy Minayo

MS. LUCY MINAYO
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

Nzau Musau

MR. NZAU MUSAU
COMMISSIONER, MEDIA COMPLAINTS COMMISSION