

REPUBLIC OF KENYA
IN THE MATTER OF THE MEDIA COUNCIL ACT [2013]
AND
IN THE MATTER OF THE MEDIA COMPLAINTS COMMISSION
COMPLAINTS COMMISSION CASE NO. 15 OF 2024

NICO OTIENO NISSEN MAGATHER.....COMPLAINANT

VS

NATION MEDIA GROUP LIMITED.....1ST RESPONDENT

EDITOR, DAILY NATION.....2ND RESPONDENT

RULING ON ADMISSIBILITY

A. THE PARTIES

1. The Complainant is a Kenyan resident named **NICO OTIENO NISSEN MAGATHER**.
2. The 1st Respondent is a media enterprise operating in the Republic of Kenya and owns several publications ,including the Nation Newspaper.
3. The 2nd Respondent is an employee of the 1st Respondent and is designated as the Editor.

B. PARTICULARS OF THE COMPLAINT

1. The Complainant alleges, in a complaint filed on 23rd October ,2024, that the Respondents published his image without consent in the Daily Nation Newspaper edition dated 18th January,2024.
2. The Complainant claims that the image ,which was captioned **‘KENYAN CONTINUE FEELING THE PINCH OF HIGH FUEL COST’**, yet he was walking, was disparaging because it implied that he had to walk to town.
3. The Complainant alleges that the 1st and 2nd Respondents unlawfully exploited his image for commercial benefit ,thereby violating his right to control the use of his likeness.
4. Additionally, the Complainant contends that the publication of an image depicting him walking in worn-out shoes, purportedly to suggest financial hardship due to rising fuel costs ,constituted an intrusion into his privacy and dignity as a public servant.
5. The Complainant seeks the following remedies:
 - a) Apology

b) A clarification

C. RESPONDENTS' RESPONSE

6. Before filing any response, the Respondents raised a preliminary objection dated 30th November, 2024. The Preliminary Objection was re-affirmed in subsequent submissions dated 10th January, 2025 by which the Respondents refuted the Complainant's allegations on grounds that:
 - i. The Complaint does not allege a breach of the Code of Conduct for the Practice of Journalism in Kenya ;
 - ii. The Complaint is fundamentally anchored on the provisions of the Data Protection Act Cap 411C of the Laws of Kenya ,to which the Complaints Commission lacks the requisite jurisdiction to hear and determine.

D. THE COMMISSION'S ASSESSMENT

7. The Commission relies on Sections 31(a), (b), and (c) of the Media Council Act, 2013, which grants it jurisdiction to receive, investigate, and address media-related complaints against journalists or media enterprises on ethical issues.
8. Section 34(1) of the Act provides:

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.*
9. Section 34(2) permits complaints under Section 31 to be made:
 - (a) orally, either in person or by any form of electronic communication; or*
 - (b) in writing, addressed to the Registrar of the Complaints Commission, detailing the grounds for the complaint, the nature of the injury or damage suffered, and the remedy sought.*
10. Section 35(1) stipulates:

Upon receipt of a complaint, the Complaints 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.

11. Section 35(3) mandates the Commission to conduct a preliminary assessment to determine the admissibility of complaints within fourteen days of receiving submissions from both the Complainant and the Respondent, ensuring that the complaint falls within the Commission's jurisdiction.
12. The Commission has assessed the arguments and the law and finds that the complaint meets the threshold for admissibility under section 34(1)(a) of the Media Council Act, 2013. The complaint raises issues regarding the conduct of the Respondent in airing the radio broadcast and whether the publication adhered to the required journalistic standards and legal obligations.
13. The 1st Respondent, as a media enterprise, and the 2nd Respondent, as its editor and a journalist, fall under the jurisdiction of this Commission, as outlined in Sections 31 and 34 of the Act.

E. ORDERS OF THE COMMISSION

14. 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 either through mediation or adjudication.
15. The Complaint is hereby admitted.

DATED and DELIVERED at NAIROBI on this17th Day of June 2025.

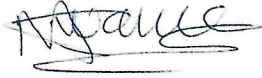


MR. DEMAS KIPRONO
CHAIRPERSON, MEDIA COMPLAINTS COMMISSION



MS. POLLY GATHONI
VICE- CHAIR, MEDIA COMPLAINTS COMMISSION

I Certify this to be a True copy
of the Original
Signed:  Date: 17th June 2025
REGISTRAR
COMPLAINTS COMMISSION
www.complaintscommission.or.ke
P.O. BOX 43132 - 00200, NRB



MR. KANTIM MWANIK
COMMISSIONER, MEDIA COMPLAINTS COMMISSION



MS. NASRA HUSSEIN OMAR
COMMISSIONER, MEDIA COMPLAINTS COMMISSION



MR. MASEME MACHUKA
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

I Certify this to be a True copy
of the Original
Sign: *Machuka* Date: *17th June 2025*
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