

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 14 OF 2024

SAFARICOM PLC..... 1ST COMPLAINANT
VERSUS
NATION MEDIA GROUP 1ST RESPONDENT
EDITOR DAILY NATION.....2ND RESPONDENT
NAMIR SHABBI..... 3RD RESPONDENT
CLAIRE LAUTERBACH 4TH RESPONDENT
DANIEL OGETTA..... 5TH RESPONDENT
KEPHA MUIRURI.....6TH RESPONDENT
EVANS JAOLA.....7TH RESPONDENT

RULING ON ADMISSIBILITY

BACKGROUND

1. On 8th November 2024, Safaricom PLC lodged a formal complaint with the Complaints Commission against the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th respondents.
2. Safaricom PLC is a leading telco company in Kenya. Safaricom PLC is a listed Kenyan mobile network operator headquartered at Safaricom House in Nairobi, Kenya.
3. The 1st Respondent is a media enterprise that owns the Newspaper Daily Nation and the television station NTV.
4. The 2nd Respondent is an editor employed by the 1st Respondent.
5. The 3rd and 4th Respondents, Namir Shabibi and Claire Lauterbach appear on the byline of one of the impugned articles.
6. The 5th, 6th and 7th Respondents are journalists employed by the 1st Respondent and appear in the byline of one of the impugned articles.
7. The complaint stemmed from an article published by the respondents on the front page of the *Daily Nation* print edition under the headline: "***Revealed: How Police Use Mobile Phones to Track and Capture Suspects.***" The same article was subsequently published on the *Daily Nation* website and disseminated across various online platforms and forums.
8. On 30th October 2024, the 4th, 5th, and 6th respondents published a follow-up article on the front page of the *Daily Nation* titled: "***Outrage Over Police Spying Exposé.***" This article was also published on the newspaper's website and shared across multiple online platforms and forums.

9. Additionally, the stories were broadcast on NTV, a news channel owned by the 1st respondent, under the headline: *"Telcos on the Spot for Aiding the Police to Snoop on Mobile Phones."*
10. The complainant alleges that the print and electronic publications violated the Code of Conduct, specifically breaching the 1st Code (Accuracy and Fairness) and the 4th Code (Accountability) and failing to seek comment from Safaricom prior to publication.
11. Furthermore, the complainant contends that the articles and broadcasts were misleading, inaccurate, inflammatory, and biased.

THE RESPONDENTS' RESPONSE

12. In their responses dated 4th December 2024, the respondents denied any violation of the Code of Conduct in relation to the articles published and the stories aired.
13. The respondents maintained that the publications were made in exercise of their constitutional rights and public duty to inform the public on matters of significant public interest, particularly concerning fundamental rights, the conduct of security agencies, and issues of data privacy and security. They argued that the publications were based on public interest and constituted fair commentary.
14. The 3rd and 4th respondents, Namir Shabibi and Claire Lauterbach, respectively, clarified that they were not the authors of the impugned articles and publications.
15. The respondents refuted the complainant's allegation that there was a lack of rigour in seeking the truth and verifying facts during publication. They asserted that due diligence was exercised to ensure the accuracy and fairness of the information disseminated.
16. Consequently, the respondents sought the dismissal of the complaint against them, arguing that the publications were justified and did not contravene the Code of Conduct.

THE COMMISSION'S ASSESSMENT

21. Under **Section 35(3)** of the *Media Council Act*, the Commission is mandated to conduct a preliminary assessment of the complaint to determine its admissibility. The Commission must establish whether the complaint raises triable issues.
22. Notably, **Section 35** does not provide specific criteria for admitting a complaint other than the requirement that the complainant alleges being aggrieved by the conduct of a journalist or media enterprise. However, as a matter of practice, the Commission ensures that: a) The complaint meets the requirements outlined in **Section 34(1)(a)** of the Act. b) No similar proceedings are currently pending before any court of law regarding the same matter.
23. The Complaints Commission derives its jurisdiction from **Sections 31(a) and (b)** of the *Media Council Act, 2013*, which empower it to receive, investigate, and adjudicate media-related complaints concerning ethical issues against journalists or media enterprises.
24. The issues raised in the complaint stem from articles published in the *Daily Nation*. These articles were published by the Respondents, and the complaint was made under **Section 34(1)(a)** of the *Media Council Act, 2013*, which states:

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, the nature of the injury or damage suffered, and the remedy sought.

25. The first Respondent, Nation Media Group PLC, is a media enterprise. The second Respondent is the Editor employed by the first Respondent. The fifth, sixth, and seventh Respondents are journalists employed by the first Respondent and appear on the byline of the second impugned article. All the above Respondents fall within the Commission's mandate as outlined in **Sections 31 and 34** of the Act.
26. The Complaint satisfies the requirements of **Section 34(1)(a)** of the *Media Council Act*, as it alleges that the conduct of the media enterprise and journalists aggrieved the Complainant. The allegations of ethical breaches and the negative impact of the article warrant further investigation.
27. The Complaint raises significant concerns related to journalistic ethics, particularly the responsibility of journalists and media enterprises to uphold the standards of **Accuracy and Fairness, Accountability, Integrity, and Opportunity to Reply**.
28. Consequently, the Commission will proceed to examine these issues further to ascertain whether the conduct in question aligns with the ethical standards prescribed in the *Media Council Act*.

ORDERS OF THE COMMISSION

29. Upon assessment, the Commission finds that, on a balance of probabilities, the complaint establishes a *prima facie* case alleging breaches of the *Media Council Act, 2013*, and/or the *Code of Conduct for the Practice of Journalism in Kenya*. The Commission is of the view that the Complainant has raised triable issues that warrant a full adjudication on merit, as contemplated under **Section 31** of the Act.
30. The complaint is hereby admitted.
31. It is so ordered.

DATED and DELIVERED at NAIROBI this.....11th FEBRUARY.....2025



MR. DEMAS KIPRONO
CHAIRPERSON, MEDIA COMPLAINTS COMMISSION

I Certify this to be a True copy
of the Original
Sign:  Date: 12th February 2025
REGISTRAR
COMPLAINTS COMMISSION
www.complaintscommission.or.ke
P.O. BOX 43132 - 00200, NRB

I Certify this to be a True copy
of the Original
Sign: *[Signature]* Date: *12 February 2015*
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[Signature]

MS. POLLY GATHONI
VICE- CHAIR, MEDIA COMPLAINTS COMMISSION

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MR. KANTIM MWANIK
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

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MS. NASRA HUSSEIN OMAR
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

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MR. MASEME MACHUKA
COMMISSIONER, MEDIA COMPLAINTS COMMISSION