

REPUBLIC OF KENYA
IN THE MATTER OF THE MEDIA COUNCIL ACT (2013)
AND
IN THE MATTER OF THE MEDIA COMPLAINTS COMMISSION;
COMPLAINT NO. 13 OF 2024

NAHASHON BORURA ONGERICOMPLAINANT

VERSUS

NATION MEDIA GROUP1ST RESPONDENT

EDITOR, DAILY NATION2ND RESPONDENT

RULING ON PRELIMINARY OBJECTION

BACKGROUND

1. The Complainant is Nahashon Borura Onger.
2. The 1st Respondent is Nation Media Group, a leading media enterprise owning several publications, including the Daily Nation.
3. The Second Respondent, an employee of the First Respondent, serves as the Editor of the Daily Nation
4. The Complainant filed a complaint dated November 4, 2024, seeking the removal from the Respondents' website of an article published on September 1, 2024, titled "**KISII MANAGER CHARGED WITH THEFT OF EXCAVATOR AS ARATI DECRIES RAMPANT GRAFT.**" The Complainant's request for removal is predicated on his subsequent acquittal in case number MCCR/E170 of 2023. The Complainant avers that the continued publication of the article has negatively impacted on his reputation and hindered his ability to secure gainful employment.
5. In a notice dated 30 November 2024, the Respondents filed a Preliminary Objection(PO) relying on the following grounds:-
 - i) That the Complaint was time barred having been filed over a year since the impugned publication contrary to Rule 11 (4) c of the Media Complaints Commission Rules 2009.
 - ii) That the Complaint does not allege a breach of the Code of Conduct.
 - iii) That the Complaint does not raise a cause of action that the Commission has the power and jurisdiction to determine.

6. Recognizing that the Preliminary Objection (PO) effectively challenges the Commission's subject matter jurisdiction to adjudicate the Complaint, the Commission directed the parties to file and serve written submissions addressing the jurisdictional issues raised therein

PARTIES SUBMISSIONS

7. The Respondents reiterate their contention that the Complaint is time-barred pursuant to the 2009 Media Complaints Commission Rules. They cite the case of John Mwaniki Mwaura v. John Ndonyo Njuguna [2018] eKLR, wherein the court held that limitation periods are not merely procedural technicalities but rather substantive provisions of law.
8. The Respondents contend that, notwithstanding the repeal of the 2007 Media Council Act, the Rules of Procedure promulgated thereunder, which have yet to be replaced, remain in force. Consequently, the instant Complaint is time-barred, having been filed beyond the nine-month limitation period prescribed by said Rules
9. The Respondents also submitted that the Complaint as framed was premised on reputational damage which was outside the jurisdiction of the Commission and cited the case Dr. Patrick Njoroge v Nation Media Group wherein the Commission cited the Case of Standard Group Limited & Two Others vs Christopher Ndarathi Murungaru[2016] wherein the Court of Appeal held that“

The Commission has no power under section 38 of the Media Council Act 2013 to award the kind of remedies that the Constitution contemplates for violated or infringed rights and fundamental freedoms including a person's right to a reputation and dignity”

10. Furthermore, the Respondents submit that the Complainant's acknowledgment of the factual basis of the article's content, coupled with the absence of any allegation of a breach of the Code of Conduct or unethical reporting, precludes the Commission's jurisdiction. The Respondents cite *MCC No. 14 of 2023, Raha Solutions v. Nation Media Group*, wherein the Complaints Commission held that it lacked jurisdiction to adjudicate disputes not predicated upon an alleged breach of the Code of Conduct for the Practice of Journalism in Kenya

COMPLAINANT'S SUBMISSIONS

11. In submitting whether the PO should be dismissed, the Complainant referred to Section 34(1)(a) of the Media Council Act, which provides that

A person aggrieved by— (a) any publication by or conduct of a journalist or media enterprise in relation to this Act;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.

12. Regarding the time limit objection, the Complainant argues that even though the article was published when he was charged (September 1, 2023), he's since been found innocent. The article staying online is still hurting his employment prospects and reputation, so he asks the Commission to order its removal from the website.

ANALYSIS AND DETERMINATION

13. The following issues crystallized for determination From their respective submissions filed and bundles of authorities.
 - a. **Whether the complaint is time-barred on account of the Complaints Commission Rules of 2009 provisions under the repealed Media Council Act Cap 411B of 2007.**
 - b. **Whether by pleading reputational damage, the Complainant infers defamation by the Complainant which the Commission has no jurisdiction over.**
14. It is noted that both grounds challenge the Commission's jurisdiction to preside over the present complaint.
15. With Respect to limitation of time, it is noteworthy that the Media Council Act, 2013, does not prescribe a specific time limitation for the filing of Complaints as such the Commission shall be guided by the Act and principles of fairness and reasonableness in determining whether the complaint was filed within a reasonable time. The continued presence of the article online and the Complainant's assertion of ongoing harm are relevant factors in this consideration. .
16. The Commission is of the view that it cannot be bound by a procedural technicality when the overarching legislation does not impose such a restriction. Given the absence of an express statutory time limit in the Media Council Act 2013, the Preliminary Objection on this ground fails.
17. **Whether by pleading reputational damage, the Complainant infers defamation by the Complainant which the Commission has no jurisdiction over.** With respect to the second ground, the Respondents have addressed *in extenso* the issue of reputational harm and the requisite jurisdiction for adjudication by a court of law, or, by extension, a quasi-judicial tribunal such as this Commission

18. The Respondents cited several precedents, including the *Dr. Patrick Njoroge* and *Ruhu Solutions* cases, wherein the Commission determined it lacked jurisdiction over defamation claims.
19. As already stated above, it was the Respondent's contention that the Commission lacked jurisdiction to entertain this complaint because the Complainant has alleged that the impugned publication was defamatory or, in his own words, "negatively impacted on my reputation" and that the Commission cannot entertain an action alleging defamation.
20. The Respondents submitted that the Complainant admitted that the contents of the article and that the complaint as framed cannot be entertained because it does not disclose any breaches of the Code of Conduct for the Practice of Journalism.
21. The second ground for consideration is the Respondents' challenge to the Commission's jurisdiction to adjudicate the Complaint, premised on the Complainant's assertion of defamation/reputational harm. The Respondents contend that, pursuant to Section 31(a) and (b) of the Media Council Act, defamation does not constitute an ethical violation subject to investigation by the Commission.
22. The Commission concurs with the Respondents' assertion that defamation constitutes a tort, the adjudication of which lies within the purview of the courts, and not an ethical matter for determination by this body. Pursuant to Section 6(k) of the Act, the Council's mandate includes the establishment of media standards and the regulation and monitoring of compliance therewith. Said standards are codified within the Second Schedule of the Act, titled "The Code of Conduct for the Practice of Journalism." The Commission's function is to enforce adherence to the high standards of journalism as outlined in the aforementioned Code.
23. Upon closer review of the Complaint, the Commission finds no actionable breach of the Code of Conduct for the Practice of Journalism. The gravamen of the Complaint appears to be reputational harm, a matter over which this Commission lacks subject matter jurisdiction. Accordingly, the Complainant is advised that redress, if any, lies within the purview of a court of competent jurisdiction.

FINAL DETERMINATION

24. The Commission finds that the complaint is not time-barred and that it may be determined on substantive grounds rather than procedural technicalities. However, since the complaint is premised on reputational damage and does not allege a breach of journalistic ethics, the

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of the Original
Sign: *K. Kando* Date: *18 Feb 2025*
REGISTRAR
COMPLAINTS COMMISSION
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Commission lacks jurisdiction to hear the matter. Accordingly, the Preliminary Objection on jurisdiction succeeds, and the complaint is dismissed.

DATED and DELIVERED at NAIROBI this.....18th ...February 2025

I Certify this to be a True copy
of the Original
Sign: *[Signature]* Date: 18 Feb 2025
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COMPLAINTS COMMISSION
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[Signature]

MR. DEMAS KIPRONO
CHAIRPERSON, MEDIA COMPLAINTS COMMISSION

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MS. POLLY GATHONI
VICE- CHAIR, MEDIA COMPLAINTS COMMISSION

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