

REPUBLIC OF KENYA

IN THE MATTER OF THE MEDIA COUNCIL OF KENYA ACT (2013)

AND

IN THE MATTER OF MEDIA COMPLAINTS COMMISSION; COMPLAINT

COMPLAINT NO 7 OF 2021

DR. PATRICK NJOROGE ..... COMPLAINANT

VERSUS

NATION MEDIA GROUP .....RESPONDENT

DETERMINATION

A) INTRODUCTION.

[1] The Complainant is a Citizen of Kenya and is the 9<sup>th</sup> Governor of the Central Bank of Kenya whereas the Respondent is a Media Enterprise and the publisher of the Daily Nation, a newspaper of national circulation in print and online.

B) PLEADINGS.

[2] By way of a complaint dated 2<sup>nd</sup> December 2021, the Complainant stated that Respondents published a story on page 25 of the Daily Nation, Business segment of 24<sup>th</sup> November 2021, titled "*CBK boss loses bid to testify in bank suit*" an article whose contents he cited were in breach of the Code of Conduct for the Practice of Journalism, and in particular Clause 2 on accuracy and fairness, clause 3 on Independence.

[3] The Complainant further stated that after raising the issue with the Respondent, the next day's newspaper published a "puny correction and apology."

[4] The Complainant sought several reliefs among them an apology, retraction, pulling down of the article from the Respondent's website, and an unequivocal admission of liability for defamation.

[5] In their Statement of Response, the Respondents stated that the contents of the Article were fair comments and fair information based on fact that the matter was an issue of public interest namely, the issue relating to the regulator's role in the collapse of Imperial Bank Limited which was a matter

of public interest and in the public domain. They further stated that the article was published under a sense of public duty and without malice to the Complainant.

[6] The Respondent further stated that as soon as it was realized that an error was made in the publication of the said article, the Respondent proceeded to issue and publish a correction and an apology to the Complainant in the Daily Nation issue of 25<sup>th</sup> November 2021 on page 2.

### C) CASE FOR THE PARTIES.

[7] In his viva voce testimony, the Complainant stated that the article was based on a decision issued by the East African Court of Justice (EACJ) on 18<sup>th</sup> November 2021 in the matter of **Appeal No 3 of 2020 Central Bank of Kenya v Pontrillas Investments Limited and Another**. However, the article in question was an inaccurate and misleading report of the decision of the Court.

[8] The Complainant argued that the headline "*CBK boss loses bid to testify in bank suit*" made it look like the Complainant had made an application to testify in the matter when in fact EACJ trial had not found any reason to compel the Complainant to appear before it as a witness and neither had the Complainant made an application to testify before the Court. He further testified that the EACJ had issued summons to the CBK's supervisory divisions and not the Complainant as stated in the article.

[9] The Respondents called one witness Mr. Brian Ambani, the author of the article in question. The witness testified that he authored the article based on the press release issued by the East African Court of Justice on the appeal relating to the Central Bank of Kenya's (CBK/regulator) role in the collapse of Imperial Bank. He testified that he had not read the actual decision of the Court.

[10] The Respondent's witness further testified that the article was a fair comment and fair information on a matter of public interest and in the public domain. He added that the Respondent took all reasonable care before the publication of the said article and that as soon it was realized that an error had been made in the publication of the said article, the Respondent proceeded to issue and publish a correction and an apology to the Complainant in the Daily Nation issue of 25<sup>th</sup> November 2021. In conclusion, he stated that it was the Respondent's Editor who was responsible for the title of the article.

[11] After the oral evidence, the parties filed written submissions reiterating the gist of their cases.

## THE COMMISSION'S DETERMINATION

[12] The Commission after hearing each party and examining their pleadings isolated the following three (3) issues for determination:

- i. Whether the Respondent's conduct was injurious to the Complainant*
- ii. Whether the Respondents were in breach of the Code of Conduct for the Practice of Journalism*
- iii. Whether the Complainant is entitled to the reliefs sought*

[13] Section 30 of the Act places an obligation on the Commission to uphold the values of the Constitution in all its adjudications in addition to the Media Council Act, 2013, and the Code of Conduct for the Practice of Journalism in Kenya.

[14] The duties of the Media Council include the application, in the case of all legacy and digital media, of standards that provide adequate protection to members of the public and all other persons from among others inaccurate or unfair treatment and unwarranted infringement of privacy, or in connection with the obtaining of material included in, publications, articles and programs in all services on television and radio.

[15] In carrying out its duties, the Commission seeks to ensure that its decisions best guarantee an appropriate level of freedom of expression and the independence of the media. The Commission is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

[16] In reaching the decision, the Commission carefully considered all the relevant material provided by both parties. This included the article in question, the written submissions by both parties and the oral submission and cross-examination of both parties.

**ISSUE ONE: Whether the Respondent's conduct was injurious to the Complainant**

[17] The Commission notes that the Complainant submitted that the article occasioned reputational harm on the Complainant and that the Commission should make a finding on this.

[18] In addressing this issue the Commission relies on the case of Standard Limited & 2 Others vs Christopher Ndarathi Murungaru [2016] where 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."*

As such the Commission, has no jurisdiction to entertain a claim of reputational harm, thus the Complainant is advised to approach a court of competent jurisdiction should it so wish.

[19] Nonetheless, the fact that the Complainant has included libel as an injury in the complaint does not in any way take away the Complaints Commission's jurisdiction to entertain the complaint to the extent of investigating breaches of the Code of Conduct for the Practice of Journalism in Kenya as cited by the Commission in Meditest Diagnostics Services Limited & Another V Nation Media Group Limited & Another (Complainant No. 03 2022) where the Commission held that the fact that the Complainant has included defamation as an injury suffered by it and prayed for an award of damages among other reliefs and remedies does not in any way take away the Complaints Commission's jurisdiction to entertain the complaint when those other remedies sought are all within its mandate. The Commission has the mandate and full jurisdiction to investigate/interrogate all the allegations in this complaint relating to the breaches of the Code of Conduct for the Practice of Journalism in Kenya.

**ISSUE TWO: Whether there was a breach of the Code of Conduct for the Practise of Journalism**

[20] On this issue, both parties concur that there was a violation of the Code of Conduct for the Practice of Journalism, and in particular Clause 2 on Accuracy and Fairness which provides that:

*2(1) "A person subject to this Act shall publish or broadcast a balanced impartial, accurate, verified and unbiased story on all matters including matters of public interest"*

[21] From the submissions, there is no doubt that the subject matter of the story published by the Respondents had immense public interest. The collapse of commercial banks brings with it untold effects on the depositors and the economy at large. But the headline and the story were inaccurate. No demonstrable and reasonable attempts were made by the reporter and the editors to confirm or verify the story with the Registrar of the East African Court of Justice or any of the Judges of the regional court before the story was published. It is our finding that there was no rigour in seeking the truth and verifying the facts of a top story on the business pages of the Daily Nation as may have emerged in the court.

[22] Both parties agree that the article in question was inaccurate and on realizing this violation, the Respondents proceeded to publish an apology and correction on page 2 of the Daily Nation on 25<sup>th</sup> November 2021, a day after the offending article was published, in compliance with Clause 2(4) of the Code of Conduct which provides that:

*“Whenever it is recognized that an inaccurate, misleading or distorted story has been published or broadcast, it shall be corrected promptly.”*

[23] The Commission has further interrogated the circumstances around the publication of the article and has isolated a breach of Clause 5 of the Code of Conduct for the Practice of Journalism in Kenya which provides that:

*“A person subject to this Act shall recognize that they are accountable for their actions to the public, the profession, and themselves therefore they shall—*

*(a) actively encourage adherence to these standards by all journalists and media practitioners:*

*(b) respond to public concerns, investigate complaints, and correct errors promptly:*

*(c) recognize that they are duty-bound to conduct themselves ethically.”*

[24] The fact that the Respondents published the article with glaring inaccuracies, and without bothering to read the decision of the East African Court of Justice which judgment had already been published on the Court's website was a failure on the part of the Respondents to be accountable to the audience, the subject matters of the news and to the profession itself and therefore violating Clause

5 of the Code of Conduct. The Respondent also failed to produce as evidence, the press release, they allegedly relied on as the source of their impugned story.

### **ISSUE THREE Whether the Complainant is entitled to the reliefs sought**

[25] The Complainant sought the following reliefs:

- a) An immediate and unequivocal admission for defamation arising from the said publication
- b) A suitable and fitting apology and given as much prominence as the defamatory publication
- c) A full retraction of the text and tenor of the offending Article
- d) Pulling down the online version of the story appearing on the Daily Nation website
- e) An appropriate offer to make amends/ compensate

[26] Before assessing any of the reliefs sought the Commission is bound by jurisprudence. We must assess whether the relief sought is provided for by law, pursues a legitimate aim and conforms to the tests of necessity and proportionality. For an exposition of the three-part test, we agree with Justice Wilfrida A. Okwany in *Cyprian Andama V Director of Public Prosecution & Another; Article 19 East Africa (Interested Party) [2019] EKLR*.

[27] Guided by the test of legality and as we have reiterated elsewhere in this decision, the Commission has neither the jurisdiction to entertain a claim for defamation nor to make damage awards thereof. As such, the Commission is constrained from granting the Complainant prayers (a) and (c).

[28] Further, the test of legality guides us to find that the Complainant is, by law, entitled to the reliefs set out in (b), (c), and (d) in paragraph 25 above. This is buttressed by the provisions of Media Council Act, 2013, Section 38 (1).

[29] The Complainant has sought a relief of an apology. A reading of the impugned article/story shows that the error was personal to the complainant, Dr Patrick Njoroge, and had the potential to be damaging to him. An apology was therefore required. The respondents on their own motion promptly published an apology and correction. Therefore, the issue for the Commission to determine is, whether the apology and correction as published was sufficient. Put differently, were the ingredients for the glue the right one and was the mixture well measured for the glue to hold?

[30] We draw our discussion from Lynn Johnston, an insightful Canadian cartoonist and creator of **For Better or for Worse**, who wrote metaphorically that “an apology is a superglue of life. It can repair just about anything.” If we follow Johnston’s metaphor above, we note that even though an apology can be a powerful life tool, things can go wrong if the ingredients of the glue are not properly measured and mixed, it does not stick; and even if it does set, often the pieces do not always fit together. It is our considered view that suitability of an apology in the media can broadly be assessed using three limbs—the content of the apology, the promptness of the apology and the prominence of the apology compared to the prominence of the offending article.

[31] Before delving into the suitability and the prominence of the apology, we look at promptness. Did the Respondent act immediately once they noticed or were notified of the inaccuracies published? The Commission appreciates that once the Respondents realized that they had published an inaccurate article they promptly published a correction in the following day’s newspaper. Therefore, on the issue of promptness, the Respondents met their obligations under the Code of Conduct.

[32] On the suitability and the content of the apology: we draw from the work of Law Professor Daniel Shuman who avers that “minimally, to be meaningful, an apology must express regret for the occurrence of a harmful event and acknowledge responsibility for it.” Others like Nicholas Tavuchis in his book, **Mea Culpa: A Sociology of Apology and Reconciliation**, [page 22] add that an effective and authentic apology requires a combination of some of the seven core elements of an apology. These elements are recognition, remorse, responsibility, repentance, reasons, reparation or restitution, and reform. Further, Christiana Bedei (2019) in offering guidance on how to make corrections in published stories advises that, when you get something wrong, you explain to the readers and apologize as a natural part of the relationship between the reporter/publication and the audience.

[33] On the issue of due prominence, we first note that the notion of prominence is subjective. It may mean different things to different people. We first reiterate what the Code of Conduct for the practice of Journalism provides for on the issue of prominence. In Clause 2 (7) it states that “a correction under this paragraph shall be given the same prominence as that given to the information being corrected.” [Emphasis added]. However, it does not elaborate on what may constitute due or same

prominence. Thus, the Code of Conduct does not effectively address itself to the notion of prominence.

[34] For purposes of this complaint, we apply some objectivity in our assessment of the issue. We highlight two key principles. First, we must be proportionate in the decisions we take on prominence and must balance the need to provide redress to the Complainant with the importance of freedom of expression. Second, in deciding on due prominence, we must consider several factors including the seriousness of the inaccuracy, the audience of the offending article and prominence of the breach. We adopt the conceptualization of due or similar prominence as opposed to same prominence as the latter implies that regardless of the extent of breach of the code, the correction must be at the same place and be of the same size as the offending article. The concept of due or similar prominence allows an objective assessment unlike the former.

[35] It allows us to assess the sufficiency of the prominence informed by the individual circumstances of each case. To decide on the issue of due prominence as in this case, we draw from the *Independent Press Standards Organisation (IPSO)'s Guidance for Journalists: 'Due Prominence.'* The guidelines highlight several factors such as the position of the breach of the Code within the publication; the prominence of the breach of the Code within the article; the extent of the breach of the Code within the Code; the public interest in remedying the breach of the Code; the consequences of the breach of the Code; and any actions taken by the publisher to address the breach of the Code.

[36] Four of the factors identified above are essential in determining the issue of due prominence in this case. These are, the seriousness of the breach of the Code, the position of the breach within the publication, the prominence of the breach of the Code within the article, and any actions taken by the publisher to address the breach of the Code. It is our considered view that the breach was quite serious as the article was inaccurate in its headline and in the first paragraphs. We however note that the publisher run a correction immediately they received a complaint.

[37] However, the correction was placed on page two of the next day's newspaper. While page two of a newspaper is a prominent page, the offending article was published as one of the top stories in the business segment of the publication, therefore targeting a very niche audience. Similarly, the correction did not include the name or picture of the Complainant - inclusions that would have given

the correction due prominence and drawn attention to the correction even though it was placed in a different page compared to the placement of the offending article.

[38] Given the nature of the article and the contents therein, it is the Commission's finding that the apology was insufficient and therefore a suitable and fitting apology with due prominence was warranted. Considering that the *Daily Nation* had published an apology on its 25<sup>th</sup> November 2021, and which has since been adjudged as insufficient, the principle of proportionality as applied by the Commission weighs against the publication of a second apology save for a reiteration of the Commission's adjudication.

[39] The Commission further notes that the Complainant's prayer to pull down the article would entail pulling down the entire newspaper as testified by the Respondent's 2<sup>nd</sup> Witness. This in the Commission's view would be a disproportionate remedy to the impugned article. Nonetheless, the Commission is not devoid of an answer to this prayer.

## **CONCLUSION.**

[40] Under Sections 38 (1) (2) of the Media Council Act the Complaints Commission or any of its panels may, after hearing the parties to a Complaint make any or a combination of the orders set out therein. Taking into account the findings of the Commission, Section 38 of the Media Council Act, and relevant provisions of the Code of Conduct and the Constitution it makes the following orders: -

## **ORDERS**

(1) Pursuant to Section 38 (1) (e) of the Media Council Act 2013, the Respondent is ordered to publish the Commission's decision and statement of adjudication in such manner as specified by the Commission in fulfilment of Clause 2(6) (7) of the Code of Conduct for the Practice of Journalism.

(2) That the Commission further specifies the terms and placement of the statement of adjudication to accord with the following parameters: -

i) The publication be done within fourteen (14) days from date of determination.

- ii) The publication to include the Complainant's photograph, name and title.
- iii) The publication be inclusive of the following statement:

*"Following an article published on page 25 of the Daily Nation, Business Edition of 24 November 2021, headlined "CBK boss loses bid to defend suit," Dr. Patrick Njoroge, the Governor of the Central Bank complained to the Media Complaints Commission that the publication was inaccurate and in breach of Clause 1 on (Accuracy and Fairness) of the Code of Conduct for the Practice of Journalism. The Media Complaints Commission upheld the complaint and observed that the Daily Nation ought to have published a sufficient apology with due prominence as the offending article. In lieu of the earlier apology published by the Daily Nation on 25<sup>th</sup> November 2021 the Media Complaints Commission directed that a statement of its adjudication be published as herein indicated."*

- (3) That copies of the impugned article that are still accessible on any of Daily Nation's platforms be accompanied by an Editor's Note reading as follows:

*"This story has been withdrawn by the publisher following a challenge on its accuracy."*

- (4) That the Editor of the Daily Nation is hereby directed to ensure compliance with these orders as per his/her responsibilities under Clause 24 of the Code of the Code of Conduct for the Practice of Journalism.

- (5) Any party aggrieved by this decision can apply for a review pursuant to Section 42(2) of the Act.

**[41] It is so ORDERED**

**DATED and DELIVERED at NAIROBI this.....23<sup>rd</sup> ...OF ...August...2022**



**WILLIAM OKETCH  
CHAIRMAN, MEDIA COMPLAINTS COMMISSION**



**ESTHER ADUMA  
VICE- CHAIR, MEDIA COMPLAINTS COMMISSION**



**DR. NANCY BOOKER**  
**COMMISSIONER, MEDIA COMPLAINTS COMMISSION**



**HENRY MAINA**  
**COMMISSIONER, MEDIA COMPLAINTS COMMISSION**



**LEMPAA SUYIANKA**  
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**DEMAS KIPRONO**  
**COMMISSIONER, MEDIA COMPLAINTS COMMISSION**



**POLLY GATHONI**  
**COMMISSIONER, MEDIA COMPLAINTS COMMISSION**

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**DETERMINATION**

**A) INTRODUCTION.**

[1] The Complainant is a Citizen of Kenya and is the 9<sup>th</sup> Governor of the Central Bank of Kenya whereas the Respondent is a Media Enterprise and the publisher of the Daily Nation, a newspaper of national circulation in print and online.

**B) PLEADINGS.**

[2] By way of a complaint dated 2<sup>nd</sup> December 2021, the Complainant stated that Respondents published a story on page 25 of the Daily Nation, Business segment of 24<sup>th</sup> November 2021, titled “*CBK boss loses bid to testify in bank suit*” an article whose contents he cited were in breach of the Code of Conduct for the Practice of Journalism, and in particular Clause 2 on accuracy and fairness, clause 3 on Independence.

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### **C) CASE FOR THE PARTIES.**

[7] In his viva voce testimony, the Complainant stated that the article was based on a decision issued by the East African Court of Justice (EACJ) on 18<sup>th</sup> November 2021 in the matter of **Appeal No 3 of 2020 Central Bank of Kenya v Pontrillas Investments Limited and Another**. However, the article in question was an inaccurate and misleading report of the decision of the Court.

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[16] In reaching the decision, the Commission carefully considered all the relevant material provided by both parties. This included the article in question, the written submissions by both parties and the oral submission and cross-examination of both parties.

**ISSUE ONE: Whether the Respondent's conduct was injurious to the Complainant**

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[18] In addressing this issue the Commission relies on the case of Standard Limited & 2 Others vs Christopher Ndarathi Murungaru [2016] where 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."*

As such the Commission, has no jurisdiction to entertain a claim of reputational harm, thus the Complainant is advised to approach a court of competent jurisdiction should it so wish.

[19] Nonetheless, the fact that the Complainant has included libel as an injury in the complaint does not in any way take away the Complaints Commission's jurisdiction to entertain the complaint to the extent of investigating breaches of the Code of Conduct for the Practice of Journalism in Kenya as cited by the Commission in Meditest Diagnostics Services Limited & Another V Nation Media Group Limited & Another (Complainant No. 03 2022) where the Commission held that the fact that the Complainant has included defamation as an injury suffered by it and prayed for an award of damages among other reliefs and remedies does not in any way take away the Complaints Commission's jurisdiction to entertain the complaint when those other remedies sought are all within its mandate. The Commission has the mandate and full jurisdiction to investigate/interrogate all the allegations in this complaint relating to the breaches of the Code of Conduct for the Practice of Journalism in Kenya.

**ISSUE TWO: Whether there was a breach of the Code of Conduct for the Practise of Journalism**

[20] On this issue, both parties concur that there was a violation of the Code of Conduct for the Practice of Journalism, and in particular Clause 2 on Accuracy and Fairness which provides that:

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[21] From the submissions, there is no doubt that the subject matter of the story published by the Respondents had immense public interest. The collapse of commercial banks brings with it untold effects on the depositors and the economy at large. But the headline and the story were inaccurate. No demonstrable and reasonable attempts were made by the reporter and the editors to confirm or verify the story with the Registrar of the East African Court of Justice or any of the Judges of the regional court before the story was published. It is our finding that there was no rigour in seeking the truth and verifying the facts of a top story on the business pages of the Daily Nation as may have emerged in the court.

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[26] Before assessing any of the reliefs sought the Commission is bound by jurisprudence. We must assess whether the relief sought is provided for by law, pursues a legitimate aim and conforms to the tests of necessity and proportionality. For an exposition of the three-part test, we agree with Justice Wilfrida A. Okwany in *Cyprian Andama V Director of Public Prosecution & Another; Article 19 East Africa (Interested Party) [2019] EKLR*.

[27] Guided by the test of legality and as we have reiterated elsewhere in this decision, the Commission has neither the jurisdiction to entertain a claim for defamation nor to make damage awards thereof. As such, the Commission is constrained from granting the Complainant prayers (a) and (e).

[28] Further, the test of legality guides us to find that the Complainant is, by law, entitled to the reliefs set out in (b), (c), and (d) in paragraph 25 above. This is buttressed by the provisions of Media Council Act, 2013, Section 38 (1).

[29] The Complainant has sought a relief of an apology. A reading of the impugned article/story shows that the error was personal to the complainant, Dr Patrick Njoroge, and had the potential to be damaging to him. An apology was therefore required. The respondents on their own motion promptly published an apology and correction. Therefore, the issue for the Commission to determine is, whether the apology and correction as published was sufficient. Put differently, were the ingredients for the glue the right one and was the mixture well measured for the glue to hold?

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[32] On the suitability and the content of the apology: we draw from the work of Law Professor Daniel Shuman who avers that “minimally, to be meaningful, an apology must express regret for the occurrence of a harmful event and acknowledge responsibility for it.” Others like Nicholas Tavuchis in his book, **Mea Culpa: A Sociology of Apology and Reconciliation**, [page 22] add that an effective and authentic apology requires a combination of some of the seven core elements of an apology. These elements are recognition, remorse, responsibility, repentance, reasons, reparation or restitution, and reform. Further, Christiana Bedei (2019) in offering guidance on how to make corrections in published stories advises that, when you get something wrong, you explain to the readers and apologize as a natural part of the relationship between the reporter/publication and the audience.

[33] On the issue of due prominence, we first note that the notion of prominence is subjective. It may mean different things to different people. We first reiterate what the Code of Conduct for the practice of Journalism provides for on the issue of prominence. In Clause 2 (7) it states that “a correction under this paragraph shall be given the same prominence as that given to the information being corrected.” [Emphasis added]. However, it does not elaborate on what may constitute due or same

prominence. Thus, the Code of Conduct does not effectively address itself to the notion of prominence.

[34] For purposes of this complaint, we apply some objectivity in our assessment of the issue. We highlight two key principles. First, we must be proportionate in the decisions we take on prominence and must balance the need to provide redress to the Complainant with the importance of freedom of expression. Second, in deciding on due prominence, we must consider several factors including the seriousness of the inaccuracy, the audience of the offending article and prominence of the breach. We adopt the conceptualization of due or similar prominence as opposed to same prominence as the latter implies that regardless of the extent of breach of the code, the correction must be at the same place and be of the same size as the offending article. The concept of due or similar prominence allows an objective assessment unlike the former.

[35] It allows us to assess the sufficiency of the prominence informed by the individual circumstances of each case. To decide on the issue of due prominence as in this case, we draw from the *Independent Press Standards Organisation (IPSO)'s Guidance for Journalists: 'Due Prominence.'* The guidelines highlight several factors such as the position of the breach of the Code within the publication; the prominence of the breach of the Code within the article; the extent of the breach of the Code within the Code; the public interest in remedying the breach of the Code; the consequences of the breach of the Code; and any actions taken by the publisher to address the breach of the Code.

[36] Four of the factors identified above are essential in determining the issue of due prominence in this case. These are, the seriousness of the breach of the Code, the position of the breach within the publication, the prominence of the breach of the Code within the article, and any actions taken by the publisher to address the breach of the Code. It is our considered view that the breach was quite serious as the article was inaccurate in its headline and in the first paragraphs. We however note that the publisher run a correction immediately they received a complaint.

[37] However, the correction was placed on page two of the next day's newspaper. While page two of a newspaper is a prominent page, the offending article was published as one of the top stories in the business segment of the publication, therefore targeting a very niche audience. Similarly, the correction did not include the name or picture of the Complainant - inclusions that would have given

the correction due prominence and drawn attention to the correction even though it was placed in a different page compared to the placement of the offending article.

[38] Given the nature of the article and the contents therein, it is the Commission's finding that the apology was insufficient and therefore a suitable and fitting apology with due prominence was warranted. Considering that the *Daily Nation* had published an apology on its 25<sup>th</sup> November 2021, and which has since been adjudged as insufficient, the principle of proportionality as applied by the Commission weighs against the publication of a second apology save for a reiteration of the Commission's adjudication.

[39] The Commission further notes that the Complainant's prayer to pull down the article would entail pulling down the entire newspaper as testified by the Respondent's 2<sup>nd</sup> Witness. This in the Commission's view would be a disproportionate remedy to the impugned article. Nonetheless, the Commission is not devoid of an answer to this prayer.

## **CONCLUSION.**

[40] Under Sections 38 (1) (2) of the Media Council Act the Complaints Commission or any of its panels may, after hearing the parties to a Complaint make any or a combination of the orders set out therein. Taking into account the findings of the Commission, Section 38 of the Media Council Act, and relevant provisions of the Code of Conduct and the Constitution it makes the following orders: -

## **ORDERS**

(1) Pursuant to Section 38 (1) (e) of the Media Council Act 2013, the Respondent is ordered to publish the Commission's decision and statement of adjudication in such manner as specified by the Commission in fulfilment of Clause 2(6) (7) of the Code of Conduct for the Practice of Journalism.

(2) That the Commission further specifies the terms and placement of the statement of adjudication to accord with the following parameters: -

i) The publication be done within fourteen (14) days from date of determination.

- ii) The publication to include the Complainant's photograph, name and title.
- iii) The publication be inclusive of the following statement:

*"Following an article published on page 25 of the Daily Nation, Business Edition of 24 November 2021, headlined "CBK boss loses bid to defend suit," Dr. Patrick Njoroge, the Governor of the Central Bank complained to the Media Complaints Commission that the publication was inaccurate and in breach of Clause 1 on (Accuracy and Fairness) of the Code of Conduct for the Practice of Journalism. The Media Complaints Commission upheld the complaint and observed that the Daily Nation ought to have published a sufficient apology with due prominence as the offending article. In lieu of the earlier apology published by the Daily Nation on 25<sup>th</sup> November 2021 the Media Complaints Commission directed that a statement of its adjudication be published as herein indicated."*

(3) That copies of the impugned article that are still accessible on any of Daily Nation's platforms be accompanied by an Editor's Note reading as follows:

*"This story has been withdrawn by the publisher following a challenge on its accuracy."*

(4) That the Editor of the Daily Nation is hereby directed to ensure compliance with these orders as per his/her responsibilities under Clause 24 of the Code of the Code of Conduct for the Practice of Journalism.

(5) Any party aggrieved by this decision can apply for a review pursuant to Section 42(2) of the Act.

**[41] It is so ORDERED**

**DATED and DELIVERED at NAIROBI this.....23<sup>rd</sup> ...OF ...August...2022**



**WILLIAM OKETCH  
CHAIRMAN, MEDIA COMPLAINTS COMMISSION**



**ESTHER ADUMA  
VICE- CHAIR, MEDIA COMPLAINTS COMMISSION**

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**DR. NANCY BOOKER**  
**COMMISSIONER, MEDIA COMPLAINTS COMMISSION**

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