

REPUBLIC OF KENYA  
IN THE MATTER OF THE MEDIA COUNCIL ACT [2013]  
AND  
IN THE MATTER OF THE COMPLAINTS COMMISSION  
MEDIA COMPLAINT NO 4 OF 2018

SAMUEL MUIGAI .....COMPLAINANT

VERSUS

THE STANDARD GROUP LIMITED ..... 1<sup>ST</sup> RESPONDENT

EDITOR KTN TELEVISION .....2<sup>ND</sup> RESPONDENT

**The Parties**

[1] The complainant is the Chairman of Royal Housing Cooperative Society. The 1<sup>st</sup> Respondent is a leading media enterprise in Kenya that owns a newspaper, a radio station, and a television station with a commanding presence in the country, the 2<sup>nd</sup> Respondent is an employee of the 1<sup>st</sup> Respondent.

**The Complaint**

[2] By a Complaint filed on 18 February 2018, the Complainant alleged that the Respondents had aired a story on their Kenya Television Network (KTN) station on a show known as "The property show" The said property show generally informs viewers and prospective buyers of property, developments and many related product and services.

[3] The show focused on a housing project purportedly developed by an entity known as "Razak Housing Co-operative Society", and its members with the help of the National Housing Co-operative Housing Union (NACHU). However, it was the Complainants contention that the land, building and development shown on the broadcast belonged to members of 'Royal Housing Co-operative Society Limited.

[4] The Complainant stated that the show raised a lot of concern, fear, accusations, and frustration amongst the members of the society who immediately started making frantic inquiries to their officials (especially the complainant) asking why their houses were depicted to belong to other individuals.

[5] The complainant claims that this broadcast led to huge financial losses for Royal Housing Co-operative Society Limited due to loss of membership and their contributions.

### **The Response**

[6] The Respondents filed a Statement of Response dated 23<sup>rd</sup> October 2018, wherein they admitted that they aired the show the subject of the Complaint on 18<sup>th</sup> February 2018 titled "*Women breaking the glass ceiling in the real estate industry*". The section which is complained about is titled "*At Home with Nancy*".

[7] The Respondents stated that the show and the segment were a celebration of women and their achievements in the real estate industry and did not mention the Complainant or Royal Housing Co-operative Society Limited in any way, shape, or form. The Respondents asked the commission to dismiss this complaint as provided for under section 35 (5) of the Media Council Act 2013 for being devoid of merit or substance.

[8] The Complaints Commission admitted the Complaint for hearing.

### **The Hearing**

[9] The then Commission as constituted at first instance attempted to facilitate an early voluntary settlement of the dispute through mediation as mandated by Section 36 of the Media Council Act [2013] but the initiative collapsed resulting into the dispute being escalated to a full hearing.

[10] However, owing to various adjournments by the parties, the terms of the Members of the then Complaints Commission lapsed on 6<sup>th</sup> September 2019 before the hearing the complaint.

[11] The Current members of the Complaints Commission were appointed on 16<sup>th</sup> October 2020 and immediately took up the matter leading to a hearing on 24<sup>th</sup> of July and 10<sup>th</sup> August 2021 respectively before a panel of the entire Commission.

### **The Complainant's Case**

[12] In his viva-voce evidence the Complainant reiterated the grounds upon which his complaint was based and further stated that the Respondents crew had actually interacted with the embers of Royal Housing Cooperative Society who gave an accurate account of what was indeed on the ground including that fact there exists a dispute over the property'

[13] The Complainant testified that the the Society had sued Nachu and Razak over the said property to which he produced a photograph of a notice on the main gate of the property, indicating that the property was the subject of a court case. He added that least he expected that a non-biased and professional media would have cautioned viewers that there was an ongoing dispute over the property.

[14] The Complainant testified that vide a letter dated the 22<sup>nd</sup> day of February 2018, he wrote to the Respondents complaining about the episode and the negative impact it was having on the society. He added that being a trained and qualified journalist who has actually trained many journalists in the country personally wrote the letter and ensured that it communicated without the need of any further explanations including stating patent breaches with the code of standard expected of the station and its journalists

[15] He added that in his letter he asked the respondents to appreciate the issues with the story and thus sought for a retraction and correction of the information that was aired either in their subsequent week's episode or their newspaper "the standard newspaper" or both depending with their appreciation of the level of harm that has befallen the complainant.

[16] He testified that in response the Respondents called him for a meeting and after being informed of the grievances he had and indeed pointing out the specific issues on the clip, they never communicated despite the urgency therein for the respondents to mitigate the damage.

[17] The Complainant further testified that owing to the inaction of the Respondents and in an attempt to mitigate the harm caused, he paid for an advert to be published by the Nation Newspapers seeking to put out the correct information and calm the remaining members as evidence by exhibit 23 at a cost of Kenya Shillings Two Hundred and Seventy -Three Thousand, Seven Hundred and Sixty Only (Kes 273, 760/-) to the Society.

[18] Thereafter, the Complainant then lodged this Complaint with this honourable Commission on behalf of the Society seeking the following reliefs;

1. Order and compel the Respondents to publish an apology, correction, clarification, and a follow up story.
2. Impose a fine on the Respondents for Breach of the Code of Conduct for the Practice of Journalism.
3. Issue a public reprimand against both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
4. That the proprietor and producer of the show “Property Show” should be fined pursuant to Section 38 (f) of the Media Council of Kenya Act 2013.
5. To award the Complainant Special damages of Kenya Shillings Two Hundred and Seventy -Three Thousand Seven Hundred and Sixty Kes. 273,276/= being compensation for the amount spent by the Complainant to pay advertisements in a bid to mitigate the information broadcast by the Respondents.
6. Costs of the Complaint.
7. Any other relief the Honorable Complaints Commission may deem fit to grant

### **The Respondents Case**

[19] The Respondents called one witness, Ms. Nancy Gathoni, who testified that she was the producer of the “Property Show”. She further testified that she was the proprietor of the Property Show with Nancy Gathoni limited. The Witness reiterated that the show and the segment were a celebration of women and their achievements in the real estate industry and was not meant to disparage the Complainant and or Royal Housing Co-operative Sacco.

[20] The witness further stated she was an independent contractor who advertises with the station, She testified that she was a marketing specialist and content creator. She however has two trained journalists in her employment and a consultant for her content.

[21] The witness stated that the Respondents provided guidelines for the kind of content the show can air and some of these guidelines include the Code of Conduct for the Practice Journalists, political neutrality. The Witness testified that these guidelines are given during an annual meeting with the station, but a copy is not provided to them.

[22] She further testified that she only conducts duly diligence on property that she intends to advertise for sale on the show. The Witness testified that the segment of the show complained is titled "At Home with Nancy" focuses on ordinary people who invite her to share their home ownership journey and that on such occasions she does not conduct due diligence on the registered ownership of the property.

[23] She testified that she was informed the story by one of her employees and she sent her crew to the story and recording, She stated that she was not the immediate person who interviewed the women from Razak Housing Cooperative and had no way of verifying the information before it was included in the show. She further testified that since was a home ownership story, she had no obligation to very the actual ownership of the house or property.

[24] She testified that she was made aware of the Complaint by on Ms. Jane Muinji, manger at KTN who also assured her that upon review of the show and that the segment in, she was advised that she had not broken any rules upon which she stopped pursuing the matter any further.

[25] She asked the Commission to dismiss the Complaint as she had not violated any Clause of the Code of Conduct for the Practice of Journalism or the Media Council Act 2013. She further testified that she does not know, nor has she met the Complainant before and bears no ill will or malice towards the Complainant nor Royal Housing Co-operative Society.

[26] In cross- examination the witness stated that there was an existed an agreement to the extent that it is the respondents who bear any responsibility and / or liability arising out of any claims from the airing of the show. She further stated that at the time of hearing, she had not been furnished with the full details of the complaint such as the documents / annexures supporting the complaint. She stated that given another opportunity she would do the show in the same way.

[27] At the close of the Respondents case, the Complaints Commission directed that both the parties file written submission with registry and on before 2<sup>nd</sup> September 2021.

#### **ISSUES FOR DETERMINATION.**

[28] With regard to the story aired in the program Property Show edition 248 *titled 'Women shattering the glass ceiling'* aired on 18/2/18 by KTN the Commission has isolated the following issues-

- i. Whether the coverage was accurate and factual;*
- ii. Whether the coverage was fair in the circumstances;*
- iii. Whether the coverage was without misrepresentation;*
- iv. Whether liability of verification of facts arises in this instance and is if so on whom?*

[29] If the answer to the first three issues are in the affirmative entirely, then the complaint collapses as no liability arises. If the answer to the first three issues are in the negative or any part of it, then liability arises against the person on whom liability attaches. Hence the consequential fourth issue will be what would in the circumstances be an appropriate sanction under section 38 (1) (2) of the Media Council Act 2013 for the breach of the code?

#### **DETERMINATION OF ISSUES.**

[30] On **issue one** the Commission was guided by the requirement in *Section 2 (8)* of the *Code of Conduct for the Practice of Journalism* which requires that-

*“A person subject to this Act shall not publish a story that fall short of factual accuracy.....”*

[31] The Merriam-Webster’s dictionary defines the word **accurate** as being *free from error or fidelity to fact or truth attained by exercise of care*. On the other hand, the word **factual** is defined as *concerned with what is actually the case*. The complainant’s assertion is that the coverage of the story was neither factual nor accurate. To resolve the first issue, it logically means that the story aired must have depicted a version of facts that is contrary to or asserts the opposite of what is proven to be the reality on the ground.

[32] Whilst the story was an account of certain Kibera women’s journey to home ownership as assisted by the National Cooperative Housing Union, it nevertheless

depicted a false narrative of Razak Housing Sacco members being the dominant occupants of houses within the development unit even going as far as quoting a number of 144 already in occupation and another 55 on the waiting list.

[33] This was in stark contrast to the situation on the ground as proven by the evidence which showed that Royal Housing Sacco members were the active and dominant members in the facility having bought the land on which the development stood, built several homes, a school, a road, a gate and even a church all of which bore the name 'Royal.'

[34] To that extent the coverage was neither factual nor accurate being that only two members of Razak Housing Sacco were interviewed and the glaring proof of a caveat notice on the gate entrance ought to have nudged the KTN crew to ascertain facts relating to the disputed nature of occupancy in the development area.

[35] On issue one, we do therefore find in favour for the complainant's argument that the show segment was not accurate or factual by exaggerating Razak Sacco's occupancy in terms of numbers and failing to verify, affirm and highlight the fact of Royal Sacco being very active on the premises and pioneering certain developments such as schools and churches.

[36] On issue two the commission takes guidance from the Code of Conduct for the Practice of Journalism at section 2(8) which states that, '*a person subject to this Act shall not publish a story that fall short of factual accuracy and fairness.*' On whether the coverage was fair is deciphered from the harm effect occasioned due to airing of the program. The complainant testified on how worried members of Royal Sacco had called him in panic immediately after the story aired which confirmed general apprehension. Indeed, the church, portions of the road and the complainant's house had been shown in the coverage yet there was no corresponding mention of the presence or participation of Royal Housing Cooperative Sacco.

[37] This was despite the fact of glaring clues on the ground and the KTN crew who covered the story must have noted the inconsistencies unless these were ignored for example the notice of the caveat emptor signboard on the gate or the institutional signboards for the schools or church. The story was therefore not fair to the members of Royal Sacco who had been in the process of enforcing their proprietary rights by way of title deed demand. The complainant gave testimony of the increase of withdrawal

requests due the story airing which likely created a perception in the minds of Royal Sacco members that the developments were being set aside for the use of Razak Sacco exclusively.

[38] On issue three, on whether the coverage was without misrepresentation the Commission put it into context. For the story to be said to be a misrepresentation then it must have not only aired facts contrary to or the opposite of what was the actual situation, but done so either intentionally, recklessly, or maliciously.

*Black's Law Dictionary* defines misrepresentation as "An intentional or negligent false representation, assertion or manifestation by words or conduct or sometimes by nondisclosure or concealment that is not in accord with the facts and often for the purpose of deceiving, defrauding, or causing another to rely on it detrimentally."

[39] The show in question was pursuing a story of interest restricted to a home ownership journey as told from the eyes of a women's cooperative society. It however did not absolve the crew from verifying the information they gathered with what was actually on the ground. In their genuine and innocent pursuit of a story they seemed to have been blind sighted to the facts though not displaying any malicious or intent to deceive or defraud. On that account the coverage is found not to have any intentional or fraudulent misrepresentation.

[40] On issue number four the Code of Conduct for the Practice of Journalism at clause 24 and 25 provides for the Editor's responsibilities and obligations as regards all content including advertisements stating that:

*24 (1) The editor shall assume the responsibility for all content, including advertisements, published in a newspaper.*

*(2) If responsibility is disclaimed, this shall be explicitly stated beforehand.*

*25. (1) The editor shall not allow any advertisement which is contrary to any aspect of this Code of Conduct.*

*(2) The editor shall be guided by the advertiser's code of conduct issued under this Act.*

[41] A glance at the editorial policy of media houses across the board provides in similar terms that veracity and accuracy in reporting are an integral part of editorial policy and editors will only publish that which they believe to be true, fair, and accurate. Every effort will be made to ascertain the factual accuracy of articles through, for instance, cross-checking of facts and the mandatory use of tape-recorders or other recording devices.

[42] Therefore, in matters of fairness there is one specific requirement: All editors must have a fact-checking procedure at the completion of the program. In the case of long-form content, for instance, this would mean that every line of narration and synch and every picture is checked for the accuracy of any factual assertion. In conclusion with regard to issue number four we hold that the responsibility of verification of facts does arise and this squarely falls on the editor who bears the last obligation to sieve what goes through for publication especially in this instance where content is sourced from independent producers.

[43] We find and hold that the story *Property Show edition 248 titled 'Women shattering the glass ceiling' aired by KTN* on 18/2/18 was not factual, accurate or fair to the constituency that the complainant represents especially with regard to the extent of and scope of Royal Sacco's occupancy of the disputed premises *vis a vis* that of Razak Housing Sacco.

#### **APPROPRIATE RELIEFS**

[44] The complainant in his notice of complaint filed on 18<sup>th</sup> February 2018 had asked for either a Correction, clarification and/or a follow-up story in terms of an apology. He had demanded that the Respondent do retract and correct the information published in equal prominence or alternatively that the Respondent broadcasts an independent factual, in-depth investigative story soon.

[45] 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 that though the story was inaccurate and unfair it nevertheless was not out rightly malicious therefore considering the time during which the story was aired and the duration of the adjudication the following is adjudged as an appropriate relief:

- (1) **THAT** pursuant to Section 38(1) (e) of the Media Council Act 2013 the Commission orders the offending editor of the broadcast, the 2<sup>nd</sup> Respondent herein to publish the Commission's decision in the manner specified below by the Commission;
- (2) **THAT** pursuant to section 38(1) (e) of the Media Council Act 2013 the Commission specifies that the publication shall be in the 1<sup>st</sup> Respondent's newspaper print edition and in form of a **Clarification** to the effect that in the *Property Show edition 248 titled 'Women shattering the glass ceiling'* aired by KTN TV on 18/2/18: -
  - i) It inaccurately stated that members of Razak Housing Sacco were the majority of house owners within the complex;
  - ii) It failed to mention that members of Royal Sacco Housing were actually the majority house owners and had developed amenities within the complex;
- (3) **THAT** pursuant to section 38(2) of the Media Council Act 2013 the Commission makes a supplementary or ancillary orders that the above **Clarification** shall also be run on the subsequent edition of the Property Show on KTN.
- (4) **THAT** the 1<sup>st</sup> Respondent is directed to forward to the Registrar of the Complaints Commission a draft of the proposed clarification within two (2) weeks of this determination for purposes of ascertaining conformity to these orders and thereafter publish the same within thirty (30) days of this determination.
- (5) **THAT** each party to bear their own costs.

**IT IS SO ORDERED.**

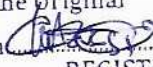
**DATED and DELIVERED at NAIROBI this 14<sup>TH</sup> DAY of SEPTEMBER 2021**



**WILLIAM OKETCH**

**CHAIRPERSON, MEDIA COMPLAINTS COMMISSION**

I Certify this to be a True copy  
of the Original

Sign:  Date: 14/09/2021

REGISTRAR

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**ESTHER ADUMA**

**VICE- CHAIR, MEDIA COMPLAINTS COMMISSION**



**PROF. NANCY BOOKER**

**COMMISSIONER, MEDIA COMPLAINTS COMMISSION**



**LEMPAA SUYIANKA**

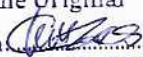
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**HENRY MAINA**

**COMMISSIONER, MEDIA COMPLAINTS COMMISSION**

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**DEMAS KIPRONO**

**COMMISSION, MEDIA COMPLAINTS COMMISSION**



**POLLY GATHONI**

**COMMISSIONER, MEDIA COMPLAINTS COMMISSION**

Delivered in the Presence of:

1. Mr. Okatch for the Complainant
2. Ms. Wangeci for the Respondents