

REPUBLIC OF KENYA
IN THE MEDIA COMPLAINTS COMMISSION
COMPLAINTS NO. 12 OF 2024

SYOKIMAU RESIDENTS ASSOCIATION COMPLAINANT

VS

NATION MEDIA GROUP LIMITED 1ST RESPONDENT

EDITOR, DAILY NATION 2ND RESPONDENT

RULING ON PRELIMINARY OBJECTION

A: BACKGROUND

1. The Complainant is a Residents Association drawing its membership from Syokimau Estate.
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: THE COMPLAINT

4. The complainant, through a complaint filed on 1st November 2024, stated that the Respondent caused to be published a misleading advertisement that warned members of the public against dealing with LR NO 12715 on behalf of an entity calling itself “**Syokimau Farm Limited**”.
5. The Complaint claims that the advertisement caused Syokimau Residents Association’s residents to panic because of the misleading nature of the advertisement.
6. Despite a letter from the Complainant to the Respondents pointing out that Syokimau Farm Limited is non-existent due to liquidation pursuant to Gazette notice 11483, the respondents have ignored their pleas for a retraction and clarification.

7. The Complainant claims that the publication contained misleading information that adversely affected the residents of Syokimau Estate.

C: THE PRELIMINARY OBJECTION

8. Before filing any response thereto, the Respondents issued a notice of Preliminary Objection dated 30 November 2024 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 provision of the Law of Contract Act Cap 23 of the Laws of Kenya, to which the Complaints Commission lacks the requisite jurisdiction to hear and determine.*
9. The Commission, having noted the P.O. may, in effect, impeach the jurisdiction of the Commission to hear and determine the complaint, invited the parties to file and serve written submissions on the same to enable it to deal substantively with the issue.

D: RESPONDENTS' SUBMISSIONS

10. The Respondents filed submissions supporting the PO accompanied by a bundle of authorities and case law, reiterating their earlier position challenging the Commission's jurisdiction to handle the matter because it is purely one of contract law.
11. Further, the Respondents submitted that they are not obligated to establish whether an advertisement is genuine or based on accurate information. Their main obligation is to publish an advertisement which is paid for and meets the basic requirements of the law on morality.
12. The Respondents sought to rely on the Court of Appeal decision, **James Kimeu Mulinge -vs- Nation Media Group [2018]**, to support their interpretation that it is not within the remit of a media enterprise to establish whether a paid advertisement is genuine or not.
13. To support their position that the Commission lacks jurisdiction to hear and determine a complaint that emanates from a purely contractual matter, the

Respondents cited the case of **Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR**. They also cited the **Media Complaints Commission Decision No. 14 of 2023 Raha Solution vs Nation Media Group and Another**, where the Commission held that it lacks jurisdiction to hear and determine contractual disputes.

E: COMPLAINANT’S SUBMISSIONS

14. In its submissions, the Complainant insisted that the Commission has jurisdiction to hear and determine complaints against journalists and media enterprises based on their obligation to the audience to publish factually accurate and fair stories, including advertisements.
15. The Complainant further submitted that the Respondents’ failure to address the Complainant’s letter of 16 September 2024, which set out the inaccuracy of the advertisement and containing proof of the inaccuracy, is a violation of the code regarding failure to correct misleading or distorted publications after being notified of the same and publish a correction, failure to identify the source of misleading or distorted publications and failure to account for its actions. The Complainant submits that the failure to respond or act on the letter triggered the complaint.
16. The Complainant submitted that the matters are properly within the Commission’s mandate by dint of Section 25 of the Code of Conduct dealing with advertisements.
17. The Complainant posited that the Respondent's reliance on the ***James Kimeu Mulinge case*** was erroneous because the matter dealt with a defamation claim. Yet, the present matter was a claim based on the breach of the Code of Conduct.
18. The Complainants also submit that unlike the James Kimeu Mulinge case, the Respondents had opportunity to verify the contents of the misleading advert since they related to information readily and publicly available citing **Ongwen & 5 others v Omollo & 6 others (Civil Appeal 133 & 150 of 2018 (Consolidated)) [2023] KECA 1444 (KLR) (24 November 2023) (Judgment) where the court cited Mwangi Kiunjuri v Wangechi Mwangi & 2 others [2016] eKLR**

19. The Complainant further submitted that the Complaint invited the Respondents to correct the misleading and distorted publication, which they failed to do against the provisions of the Code of Conduct, which was an abdication of their duties.
20. They also submitted that the **case MCCC No 14 of 2023 Raha Solutions v Nation Media Group & Another** did not apply to the present dispute because it was a dispute between an advertiser and a media enterprise, whereas, in the present matter, the Complainant has no contractual relationship with the media enterprise and relates to an offending advert.

F: ANALYSIS AND DETERMINATION

21. From the pleadings filed, the respective parties' submissions and bundles of authorities, the following issues crystallise for determination:
 - Whether the Complaint is based on an enforcement of a contractual agreement or an allegation of breach of any clause of the Code of Conduct on the Practice of Journalism.
22. It is noted that the impugned advertisement was a product of a purely contractual agreement between the media enterprise and the entity that took out the advertisements.
23. It is also noted that the Complaint emanates from a third party (Syokimau Residents Association), who claims that the contents of the advertisement aggrieved it. Paragraph 7 of Mohammed Ismal's Affidavit in support of the Complaint expressly claims that the complainant instructed their advocates to point out the misleading and inaccurate nature of the advert.
24. Unlike, **MCCC No 14 of 2023 Raha Solutions v Nation Media Group & Another** which was based on a dispute between an advertiser and media enterprise, this Complaint is not grounded in the enforcement of a contractual agreement. Instead, it arises from a third party's grievance regarding the content of an advertisement. The Complainant initially sought redress directly from the media enterprise but received no response. Consequently, the Complainant escalated the matter by filing a complaint with the Complaints Commission.

I Certify this to be a True copy
of the Original

Sign:.....*K. Kibuka*.....Date: *14 February 2025*

REGISTRAR

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25. As such, the Commission finds that the matter is not based on enforcing a contractual agreement but on allegations of a breach of the Code of Conduct.
26. After carefully considering the law and the submissions, we considered several questions. The questions include: -
- i. Whether a complaint has been lodged against a media house and a journalist in Kenya?*
 - ii. Does the complaint fall within the material jurisdiction set out in the Media Council Act of 2013?*
 - iii. Whether ethical issues have been pleaded in the complaint?*
27. There is no doubt that the answers to the questions above are affirmative.
28. It is our findings that the complaint as filed falls in all fours, within the functions and powers of this commission to adjudicate and mediate. The commission's broad mandate is to mediate or adjudicate in disputes between the government and the media and between the public and the media and intra-media **on ethical issues**.
29. Taking into account the above findings, this Commission finds that since the Complainant's Complaint is based on ethical issues, making a determination as to whether or not the paid advertisement violated the code of conduct at this stage will be draconian as the Complainant's Complaint would have been determined via a **Preliminary Objection**.
30. Considering all submissions and authorities, we determine that the complaint does not emanate from a purely contractual matter and that the Complainant is properly before the Commission under the Media Council Act Under Sections 31 and 34.
31. Consequently, the Commission finds and holds that the complaint should be heard and facts ascertained to arrive at a just determination.
32. The upshot of the foregoing is that the 1st Respondent's **Preliminary Objection dated 30th November 2024** is not merited and the same is dismissed entirely and the complaint admitted.
33. No orders as to costs.
34. It is so ordered.

DATED and DELIVERED at NAIROBI this.....13thFebruary.....2025

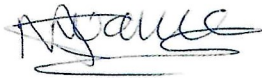
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CHAIRPERSON, MEDIA COMPLAINTS COMMISSION



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