

COMPLAINTS COMMISSION



END TERM REPORT

2020 - 2023

A report on the **Complaints Commission** activities, achievements and challenges for the period 2020-2023

FOREWORD FROM THE CHAIRPERSON



In October 2020, the current Commission assumed office with great enthusiasm and high expectations from the industry. There had been increasing calls for the media to be tamed considering prominent and identified cases of journalistic infractions. The net effect was a surge of defamation related lawsuits filed in the formal court systems against media houses whose end occasioned punitive damage awards, which in itself is a threat to media freedom. A vacuum had been occasioned by the long transition period between the end of term of one commission to the recruitment of the next. This lull left the public and critical stakeholders with no recourse to an alternative forum for the settlement of media related disputes away from the formalized and expensive judicial system. A critical lesson here for the appointing authority is to ensure that transitions are expedited to guarantee the public a standing right of access to justice forums within the media sphere.

This Commission set down to work and prioritized team synergy, Alternative Dispute Resolution (ADR) promotion and stakeholder engagement as the critical pillars that would enable it restore professionalism in journalistic practice through proactive enforcement of the Code of Conduct for the Practice of Journalism in Kenya. Having been sworn in at the height of the COVID-19 pandemic, the Commission also resolved to adopt e-justice systems by shifting most of its services online through virtual meetings, hearings, and mediations. The Commission adopted a collaborative framework with the Media Council of Kenya whose facilitative role was invaluable by way of human and financial capital. In this period the Commission

processed over forty (40) media complaints by way of adjudication, mediation and referral. This task was undertaken in the context of a dynamic and complex industry, where the right of the public to know is balanced with the privacy rights of the citizens.

The Complaints Commission is playing its part in responding to the challenges posed by these new digital platforms and media convergence. It is a forum for all parties to complain about any publication whether digital, print or online. We aspire to be the first port of call for all media related disputes to give chance to growth of alternative dispute resolution (ADR) mechanisms within the media sector which is also demanded by the Constitution of Kenya in article 159. With pride I give special recognition to the current Commissioners, who as trained and qualified professional mediators, have raised the bar of mediation so high by adeptly and professionally concluding over 10 complaints by way of mediation which resulted into publication of apologies and retractions in publications of national circulation. During its term of office 2000-2023, the Complaints Commission continued its central task of handling complaints efficiently, fairly and in a cost-effective manner which aided in promoting high standards of media practice in print, broadcast, and online publications.

I would like to thank the Complaints Commissioners for the support, dedication, and team spirit in meeting our objectives and the CEO of the Media Council of Kenya Mr. David Omwoyo for his continued facilitative support, with a special mention to Eric Ngaira, Registrar, and his Secretariat team. They did an admirable job in assisting the Commission execute its mandate.

CPM. (Mr.) William Otieno Oketch, OGW
CHAIRPERSON.

MESSAGE FROM THE REGISTRAR



The last three years have seen the Complaints Commission register tremendous results in line with its media disputes resolution mandate. I am pleased that the strides made by the exiting Commission, which came into office in October 2020, have cemented the place of the Complaints Commission in resolving disputes and responsible journalism, ultimately contributing to the adherence professional standards in the media industry. The Commission's proficiency and its hands-on engagement in the dispute resolution particularly in mediation during the period has placed the Commission at the pedestal of media regulation not just regionally but globally. This has seen the Commission gain wide recognition as a media regulation reference, including playing a major role in the Internal Training Programme (ITP) where the Commission has been represented in both Cohort 4 and 5 of the programmes.

The Commission has remained steadfast in implementing the provisions of the Media Council Act 2013 which gives it the responsibility to resolve disputes in the media sector in a cost-effective manner without fear or favor. On behalf of the Secretariat, I am pleased to report that during the Commission's tenure, the Commission recorded remarkable improvements that have seen it surpass most of its targets with regards to the resolution of disputes with the average turnaround time of 60 days. This has been aided by the fact that the members of the Commission are certified mediators and have emphasized mediation as the first line of intervention in the disputes before it. In turn the Commission recorded improved

response from the public as an alternative avenue for resolving the disputes in a speedy and cost-effective manner.

The Commission is grateful for the sustained funding from the National Treasury and the Media Council of Kenya that enabled it to initiate interventions aimed at adherence to professionalism in the media. Much of the period was marked by heightened activities to support implementation of the Commission's disputes resolution mandate and outreach programmes in line with the Council's 2018-2023 Strategic Plan which aims to promote media freedom and professionalism and enhanced disputes resolution mechanisms.

I thank the outgoing Chairperson and members of the Complaints Commission for their unwavering support in steering the Commission and the CEO and Staff of the Council for their dedication and support towards ensuring that the Commission fulfilled its mandate.

Erick Ngaira

REGISTRAR, COMPLAINTS COMMISSION

ACKNOWLEDGEMENT

From the onset, the Media Complaints Commission wishes to acknowledge the support given by its sister agency the Media Council of Kenya represented by the CEO Mr. David Omwoyo during the entry into office and throughout the period. All the activities achieved could not have been possible without this support. The cooperation received from the MCK Secretariat, the media sector stakeholders as well as the parent Ministry of ICT & Digital Economy was overwhelming. This was particularly observed during coming into office, secretariat administrative support, stakeholder meetings, implementation of work-plan activities and formal mediation or adjudication hearings. These were clear indications that the media sector works better in a consultative and cooperative approach to deepen synergy. This report is therefore a testimony to the good working relations for which the Commission is grateful.

This first end term report of the Media Complaints Commission is a result of contributions from both Commission members and technical staff represented by the Registrar Mr. Eric Ngaira; Legal Researcher Ms Brenda Onyango and Communications and Liaison officer Ms. Fenolla Kerubo. It has particularly been made possible by the support of the Media Council of Kenya who provided technical assistance through its design department that organized the raw draft of what the team had collected, collated and analyzed documenting the achievements, challenges and pending activities of the Commission during the period under review. The result of this commendable support is therefore the culmination of this informative publication that will remain a reference document in the institution for years to

come. We extend our gratitude to all media sector stakeholders, the line ministry, lawyers, agencies and partners who worked closely with the Commission.

The Commission acknowledges its members and staff who made it possible to achieve the milestones indicated in the report. The level of commitment among the Complaints Commission fraternity is highly appreciated. It is hoped that this spirit continues even as the Commission hopes to receive the next team of members including any who may be retained. Finally, we most sincerely thank the Almighty God, whatever we conceive Him to be, for the gift of life, health and strength given to us to enable the Commission to perform its mandate.

EXECUTIVE SUMMARY

This report is an account of the activities of the Media Complaints Commission. The report covers the period from October 2020 to 16th October 2023. It shares the experiences of the Commissioners and shall act as an accountability document for the three year period served.

In three years, the Commission has resolved 36 media related Complaints. Seventeen of these cases were resolved by way of adjudication while eight of them were resolved through mediation. Other six cases were withdrawn and three settled by the parties through mutual consent. Parties in two cases did not appear and therefore their cases were dismissed.

The success of the Commission was necessitated by the fact that Commissioners comprised of a multidisciplinary team and all the members were certified professional mediators. The team also benefitted from a timely training on legal writing specifically the formulation of judgments, rulings and orders. To enhance visibility, the Commission undertook several stakeholder meetings and public engagements. However, there is still need for targeted public engagements to different segments of society that continue to feel unrepresented and sometimes misrepresented in the media.

Additionally, the success of the Commission was made possible by the fact that members in a collegiate manner during caucuses were able to isolate and agree on issues that arose in the process of settling disputes that were filed by aggrieved parties.

However, the Commission experienced several challenges including delay in processing of statutory instruments necessary for the smooth running of the Commission. A case in point is with regard to the publication of the Rules of Procedure which was beyond the Commission's control.

Nonetheless the Commission remains as one of the best fora to resolve media related disputes in an effective and efficient manner, and should be supported to have a strong Secretariat and resources to discharge its mandate.

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CHAPTER ONE

1. INTRODUCTION

1.0 Historical Background: Mandate and Establishment

The Complaints Commission was first established under the Media Act 2007(Repealed) by The Media Council Act 2013 in fulfillment of the provisions of Article 34(5) of the Constitution of Kenya to establish an independent body to set media standards and ensure compliance with those standards. The Complaints Commission undertakes this function in conjunction with the Media Council of Kenya. Both are established by the Media Council Act 2013.

The Commission began operations in 2009, and since then has seen five different regimes of Commissioners serving as shown in (Appendix 1). The Constitution of Kenya (COK, 2010) created a progressive Bill of Rights which entrenched freedom of the media under article 33; freedom of expression under article 33 and standing right to access to information under article 35 of the constitution. Article 34(5) of the Constitution provides that Parliament shall enact legislation that provides for the establishment of a body, which shall: -

- a) Be independent of control by government, political interests or commercial interests;
- b) Reflect the interests of all sections of the society; and
- c) Set media standards and regulate compliance with those standards.

Pursuant to that section the Media Council Act No.46 of 2013 was enacted which designates the Media Council as the body contemplated by Article 34(5) of the

Constitution. The Media Council Act No. 46 of 2013 (the Act) was enacted to give effect to Article 34(5) of the Constitution. The Act establishes two institutions: -

- a) Media Council of Kenya (MCK)
- b) The Complaints Commission (CC)

The Complaints Commission is an independent body established under Section 27 of the Act. Pursuant to section 30 of the Act, the operations of the Complaints Commission are guided by the provisions of Article 159 of the Constitution. The functions of the Complaints Commission are to: -

- a) Mediate or adjudicate in disputes between the government and the media and between the public and the media and intra media on ethical issues;
- b) Ensure the adherence to high standards of journalism as provided form in the code of conduct for the practice of journalism in Kenya; and
- c) Achieve impartial, speedy and cost-effective settlement of complaints against journalists and media enterprises, without fear or favour in relation to the Act.

In accordance with section 32 of the Act, the Commission is empowered to: -

- a) Establish and maintain an internal mechanism for the resolution of disputes;
- b) Prescribe procedures for determination of disputes relating to the media;
- c) Receive, investigate, and deal with complaints made against journalists and media enterprises.
- d) Summon and receive information of evidence relating to any matter.

The Commission is not bound by the rules of evidence as set out in the Evidence Act (Cap. 80); it regulates its own procedure. The Commission is comprised of a

Chairperson and six (6) other Commissioners pursuant to section 28 of the Act which states that the Complaints Commission shall consist of: -

- a) A chairperson, who shall be a person who holds or has held a judicial office in Kenya or who is an advocate of the High Court of Kenya of not less than ten years standing; and
- b) Six other persons with knowledge and experience in any one of relevant areas including journalism; Media policy and law; Media regulation; Business practice and finance; The performing arts or entertainment; Advertising practice.

The term of the current Commission, which came into office on 16th October 2020, will come to an end on 16th October, 2023. It has been led by Mr. William Oketch, OGW as its Chairperson Members of the Commission are Ms. Esther Aduma OGW, Ms. Polly Gathoni, Mr. Lempaa Suyianka, Mr. Henry Maina, Prof. Nancy Booker, and Mr. Demas Kiprono.

Purpose of the Report

This report endeavors to give an account of the Media Complaints Commission with regards to its role in enforcing the Code of Conduct for the Practice of Journalism in Kenya through setting up of a disputes resolution mechanism by way of mediation or adjudication. It seeks to outline the progressive operations of the organization from the time of its swearing into office in late 2020 to the present time as a key stakeholder and partner in the realm of media sector generally and promotion of professional journalistic practice specifically.

It highlights the existing media sector structures including the shared objectives. The report also documents the achievements, pending activities, challenges and lessons learnt among other experiences of the current term members of the Commission. The outgoing members came into office on 16th October 2020 and have improved the working processes and re-ignited its systems from the previous dormant role to where it is today. This is therefore a formal report to the incoming Commission members and the key stakeholders in the media sector.

In summary, the report serves as:

- 1) A repository for institutional memory for the incoming members
- 2) A documentation of achievements, challenges and pending activities which the new team should take over.
- 3) Information to the media sector working group as well as other institutions of governance including the Parliament and the people of Kenya as consumers of media.

Methodology

The report is developed from primary and secondary data available in the institution. This is because it is largely a historical reflection of the activities the members have dealt with since their inauguration in October 2020 to October 2023. It also reflects on the challenges faced, lessons learnt and offers recommendations for follow up by the incoming team. The report details the pending activities for the incoming team to pick up from. The report has been developed in a participatory approach which considered every aspect of the activities undertaken by the outgoing team and the secretarial staff. Contributions for inclusion in the report were received from every thematic area.

CHAPTER TWO

BIOGRAPHY

Mission, Vision and Core Values (Graphical art depiction)

Mission

To enforce adherence of the Code of Conduct for the Practice of Journalism in Kenya.

Vision

To achieve impartial, speedy, and cost-effective settlement of disputes in the media sector.

Our Core Values

- Professionalism
- Innovation and Creativity
- Accountability and Transparency
- Independence
- Teamwork

Members Bio -data

On 14th October, 2020, the then Cabinet Secretary for ICT Mr. Joe Mucheru appointed through vide Vol. CXXII-No. 187 Gazette Notice No. 8099 the following persons to be Chairperson and Members of the Complaints Commission respectively for the period 2020-2023;

Mr. William Otieno Oketch, OGW – Chairperson



Mr. William Otieno Oketch is an Advocate of the High Court of Kenya with over fourteen (14) years post-admission professional experience in legal practice and compliance, consultancy, adjudication, policy analysis, human rights, and civil society arenas. He has vast experience in handling tasks associated with statutory, administrative and regulatory compliance systems both for government and non-government roles. He holds a Certificate in Professional Mediation from the Mediation Training Institute East Africa; an Advanced International Certificate in Media Self-Regulation within a Democratic Framework from Linneus University, a Bachelor’s degree in law (LLB) from the Kampala International University; a Post- graduate Diploma in Legal Practice Kenya School of Law and a Master’s degree in Public Policy and Management (MPPM) Strathmore Business School. He is currently a Governance, Policy and Tax consultant at SES Law Advocates.



Ms Esther Aduma Jowi, OGW – Commissioner and Vice-Chairperson

Ms Esther J.A.Aduma is the current Vice Chair of the Complaints Commission. She is an advocate of the High Court of Kenya, a Certified Professional Mediator (CPM) and an Arbitrator (MCI Arb). She is a career public servant having worked in both Local Government in the defunct Nairobi City Council (NCC) and the mainstream civil service at the State Law Office (SLO) for many years. She has held various senior

positions, notably Assistant and Deputy Town Clerk at NCC, Secretary/CEO and Commissioner at the Advocates Complaints Commission at SLO. She has more than 20 years' experience in handling complaints, both in investigation and prosecution of complaints of professional misconduct and ethical issues.



Mr. Henry Omusundi Maina – Commissioner

Henry O. Maina is a Deputy Director, Research, Strategy & Policy at Anti Counterfeit Authority. Maina is a Chevening Scholar (2007) with a distinguished career as a public and social policy expert, adjunct lecturer and a media practitioner with over 25 years experience. He has led media freedom and access to information policy discussions in many African states. Mr. Maina has also sat in a number of national and regional teams reviewing media, data protection, cyber security policies and laws. Mr Maina holds a Master of Law (LLM) degree specializing in International Development Law, Governance and Human Rights, from the University of Warwick . He also holds a Post-graduate Diploma in Mass Communication from the University of Nairobi and a Bachelors degree in Education with majors in English Language and literature in English. He is also a Certified Professional Mediator.



Prof. Nancy Booker – Commissioner

Commissioner Prof. Nancy Booker is an Associate Professor of Journalism, Media and Communication and is the current Dean, at Aga Khan University's Graduate School of Media and Communications (GSMC). She has had a distinguished career spanning 22 years as a journalism and communication academic, teacher, researcher, and media practitioner.

She has worked in several universities in Kenya and also worked in Post-war Liberia where she was involved in the efforts of rebuilding the country by setting up the Department of Communication at ABC University. She also worked at Daystar and Multimedia University where she was Chair of the Journalism and Communication Department for 5 years. Prof. Nancy Booker currently serves as the Vice President of Africa Journalism Educators Network (AJEN) and the Treasurer of the East Africa Communication Association (EACA). She is a Certified Professional Mediator (CPM) and has also been trained in leadership at Harvard.



Mr. Demas Kiprono-Commissioner

Mr Demas Kiprono is a Chevening Scholar, and is an advocate of the high court with 11 years of experience, specialising in human rights and constitutional law. Currently serving as Deputy Executive Director at the Kenyan Section of the International Commission of Jurists (ICJ Kenya), he has led impactful research-based campaigns to reform the security sector, protect digital rights and

safeguard civic space and freedom of the press over the past eight years. He has a Bachelor's in Law (LLB) from Moi University, a Postgraduate Diploma in Law from the Kenya School of Law and a Master's in Law (LLM) from Bangor University, United Kingdom, where he explored cutting-edge research on how to regulate artificial intelligence (AI) from a human rights perspective. Additionally, Kiprono is a Certified Professional Mediator.

Through rigorous studies at renowned institutions, Kiprono has studied media policy, constitution building, the intersection between technology and human rights, emerging technologies, and climate change policy. Oxford University in the UK, Central European University in Budapest, Hungary, Aristotle University in Thessaloniki, Greece, and Hertie Executive School in Berlin are some of the institutions where he studied. Over the past four years, Kiprono has been a columnist for the Friday Standard.

Throughout his distinguished career, Kiprono has contributed significantly to freedom of expression jurisprudence through strategic litigation, winning the most important cases involving criminal defamation in Kenya and safeguarding rights during the petition challenging the Security Laws Amendment Act of 2014.



Mr. Suyianka Lempaa – Commissioner

Mr. Lempaa Suyianka is an Advocate of the High Court of Kenya. He holds a Degree in Education with majors in English and Literature in English, a Post Graduate Diploma in Mass Communication, a Bachelor’s Degree in law (LLB), A Post-Graduate Diploma in Law from the Kenya School of Law and LLM in International Human Rights of the University of Essex. He has in the past worked as a journalist with the State Broadcaster, KBC and Nation Media Group. He has also consulted with International Center for Policy and Conflict as a public interest litigation advisor. Mr. Lempaa works with Katiba Institute as litigation counsel where he has been for ten years. As a partner with Mugeria Lempaa & Kariuki Advocates, he is experienced in trial advocacy legal drafting and writing, litigation and legal training. Mr Lempaa has also worked with the National Coalition of Human Rights defenders as a defense counsel on human rights defenders across the country.



Ms. Polly Gathoni – Commissioner

Commissioner Polly Gathoni is a Business, Finance and ICT expert with over 20 years of corporate experience. Polly holds a Master of Science –Management Information Technology Degree from Lesley University, Cambridge MA USA and a Bachelor of Commerce-Business Administration from the Catholic University of Eastern Africa



Complaints Commission Secretariat

In addition to the Registrar, Mr. Eric Ngaira the Media Council has deployed the following staff to the Complaints Commission, Ms. Brenda Onyango, responsible for Legal Research and Ms. Fenollah Kerubo responsible for Corporate Communication for the Commission in liaison with the Council’s entire Corporate Communications Department.

Case Summary

During its tenure the Complaints Commission received a total number of 36 Complaints from the year 2020 October to the October 2023. These complaints covered a range of issues including accuracy, fairness, accountability and opportunity to reply among other ethical concerns set out in the Code of Conduct for the Practice of Journalism in Kenya (Schedule II) of the Media Council Act 2013. The Commission has effectively and judiciously discharged its mandate as summarized in the table case component matrix below: -

SUMMARY CASE COMPLEMENT DURING TERM		NO.	PERCENTAGE
1.	Complaints resolved by adjudication	17	47.2%
2.	Complaints resolved by mediation	8	22.2%
3.	Complaints withdrawn by parties	6	16.7%
4.	Complaints settled by consent of parties	3	8.3%
5.	Complaints dismissed for want of prosecution	2	5.6%
Total Number of Complaints Processed		36	100%

Processes at the Commission

The following is a brief for the legal processes expected when a complaint is filed before the Commission.

Procedure of filing a Complaint

- a) A person or aggrieved by a publication from a Journalist, Media House or both is required to fill in Complaints Form 1. (see appendix 1). This form is also available at the Complaints Commission Secretariat on the Commission's website.
- b) The Complaints Form requires the party to set out the grounds of the complaint, the nature of the injury or damage suffered, and the remedy that they are seeking .
- c) Upon receipt of the Complaint, the Registrar formally notifies the party against whom the complaint is made within fourteen-days of receipt of the Complaint, stating the nature of the complaint, the breach of act or omission complained of and the date on which the matter shall be mentioned by the Commission for directions.
- d) The notice referred in b. above requires the person against whom the complaint is made to respond to the complaint in writing within 14 days.
- e) Parties can appear before the Commission through a duly appointed representative or in person on the stated mention date.
- f) After considering each party's submissions, the Commission then conducts a preliminary assessment to determine the admissibility or otherwise of the complaint lodged within fourteen days.
- g) Thereafter, the Commission may either admit the Complaint or dismiss it.
- h) Should the Commission admit the Complaint then the Commission will attempt an early resolution of the Complaint in a voluntary mediation between the parties.

Working Sessions and Other Engagements



The Complaints Commissioners hosting the Media Council of Malawi when they visited Kenya for a benchmarking tour.



Complaints Commission Chairman Mr William Oketch and Commissioner Prof Nancy Booker at Mombasa-based MO Radio, speaking to listeners on the role and mandate of the Commission.



The Complaints Commissioners and Media Council of Kenya Secretariat at a strategy retreat in Mombasa.



Complaints Commissioners soon after being sworn in November 2020.



Commissioners waiting to take oath of office in November 2020. The decisions of the Commission have the force of the decisions of a court of law are only appealable to the High Court.

Mediation Flow Chart (for cases referred to the Media Complaints Commission)



Remedies of the Complaints Commission

As outlined in section 38 of the Media Council Act 2013 the Complaints Commission or any of its panels may, after hearing the parties to a complaint,

- a) Order the offending party to publish an apology and correction in such manner as the Commission may specify;
- b) Order the return, repair, or replacement of any equipment or material belonging to a journalist confiscated or destroyed;
- c) Make any directive and declaration on freedom of expression;
- d) Issue a public reprimand of the journalist or media enterprise involved;
- e) Order the offending editor of the broadcast, print or online material to publish the Commission's decision in such manner as specified by the Commission;
- f) Impose a fine of not more than five hundred thousand shillings on any respondent media enterprise and a fine of not more than one hundred thousand shillings, on any journalist, adjudged to have violated the Act or Code of Conduct for the practice of Journalism in Kenya, where upon such a fine shall be a debt due to the Council and recoverable as such;
- g) In its reasons for its findings, record a criticism of the conduct of the complainant in relation of the Complaint, where such criticism, is in its view, warranted;
- h) Recommend to the Council the suspension or removal from the register of the journalist involved;
- i) Make any supplementary or ancillary orders or directions that it may consider necessary for carrying into effect orders or directives made.

Appeals of Decisions

Section 42 of the Act provides that a person aggrieved by the decision of the Complaints Commission may appeal to the High Court. The Commission is also empowered to review its decisions with regard to dismissal of a complaint after conducting a Preliminary Analysis.

Reflection by Members of the Commission

The Commissioners shared the following reflections on their tenure of service.

“In the last month of my first full term, I look back with a lot of pride and gratitude at the accomplishments we have had at the Commission. These three years have been remarkable and eventful in service to the public and media fraternity. At a personal level, the term represents a journey of learning, passion, service, friendships and challenges. Working as a conflict resolver in the media space is like being at the university of life – every day is a learning experience – learning-by-doing, new concepts, and adapting to new situations, and interests. I have learnt from brilliant colleagues and industry professionals. I have also acquired invaluable knowledge from community level and grassroots engagements concerning the role of media in a growing democracy. The unbridled enthusiasm of my fellow Commissioners and Secretariat with whom I have worked has been rewarding. It has been a privilege, and my greatest honor to serve as Chairperson of the Commission that fulfils a cardinal role in protecting media freedom and enforcing professional journalist practice. To many more teams!”

William Oketch OGW- Chairperson

“I have served on this Commission as the Vice Chair during which I have given my time and service 100% by attending all Commission meetings and sessions as well as all official engagements to which invitations have been extended to the Commission. I appreciate the support extended to the Commission by the Ministry of ICT through the MCK by facilitating our work seamlessly and granting us opportunities for trainings and participating in outreach activities among others. As Commissioners we have worked under an atmosphere of appreciating each other's contribution, skills and experience and each Commissioner being given equal opportunity in writing Rulings and Determination of cases. This Commission is the first one to undertake mediation of cases as required by the Act and has succeeded in concluding several cases through the mediation process. During our term we have identified some gaps in the Media Act and the Code of Conduct for the Practice of Journalism in Kenya which we hope will be addressed going forward. I thank God for the privilege and opportunity to serve.”

Commissioner Esther Aduma OGW - Vice Chair

“These past years have been a period of immense learning and growth for our Commission and the media fraternity. Despite complex challenges, the Commission has shaped legal precedents and upheld the fundamental principles of justice, human rights and media ethics. We have grappled with various issues, including determining "jurisdictional boundaries", especially in cases where publishers operate outside Kenyan territory. We have also considered what constitutes "due prominence" when complying with an apology order. Even in matters ostensibly falling under the umbrella of public interest, protecting children's rights has been subject to intense scrutiny. Navigating these complexities requires understanding the legal framework, ethical considerations, societal implications, and the unique roles of a free, independent, responsible press and freedom of expression. Our commission has been enriched by the diverse skills of its members, who collectively bring together experience on the bench, complaints handling, business and information technology (IT), journalism, journalism training, human rights, constitutional law and legal practice.”

Commissioner Demas Kiprono

*“The past three years have provided me with a great opportunity to serve and learn. I’ve had the opportunity to witness, firsthand, the far-reaching consequences of inaccurate reporting and how it can impact individuals’ reputations, businesses, and overall credibility. The decisions we’ve made during this time hold significant value for media organizations and the academic community. They serve as essential examples for ethical decision-making in the newsrooms as well as the teaching of media ethics and law. For instance, the **Calisto Okisa Vs. The Standard Group Plc case** should serve as a guiding reference for reporting on children, addressing issues of privacy and parental consent. I am pleased that in addition to all the other work that the commission completed, I successfully mediated disputes during this period. These experiences have not only broadened my understanding of media ethics but have also reinforced the significance of responsible journalism in our society.”*

Commissioner Prof. Nancy Booker

“ADR processes have allowed us to address complaints in a manner that not only upholds the principles of impartiality and fairness but also minimizes the time and resources spent on protracted legal battles. The impact of ADR on media houses as business enterprises has been significant. In instances where disputes are escalated to court, they may incur substantial fines, potentially rendering businesses financially unsustainable. From my perspective, most media-related complaints that go to the courts can effectively be resolved through ADR. Secondly, the integration of technology in our operations has not only enhanced our efficiency but also expanded our reach. Virtual mediation and adjudication have made it possible for complainants and media enterprises from different regions to participate in the dispute resolution process without the need for extensive travel. This has been instrumental in achieving our mandate”

Commissioner Polly Gathoni

“I have learned a lot in the last three years of service to the Commission. The term of the Commission started at the height of the COVID-19 pandemic, and as a person, it was a new way of resolving disputes using alternative methods such as virtual hearings. Despite this challenge, the Commission navigated and handled cases as professionally as possible. I look back and pride myself on the richness of the jurisprudence that the second Commission has built over the last three years. While some of the matters were straight forward, some were quite challenging and required a lot of mental rigour to analyse evidence and apply the law and the Code of Conduct for the Practice of Journalism in Kenya. I also cannot forget the mediation, training, and application in resolving real and not hypothetical disputes that I handled and guided the parties to settle using the skills learned. Other than dispute resolution, I cannot forget the media advocacy engagement. My Service to the Commission also saw my financial growth as the allowances came in handy to complement whatever else I do for a living. In a nutshell, it was an excellent quasi-judicial experience for my professional growth”

Lempaa Suyianka-Commissioner

“The last three years have been rewarding. I have made new friends and reconnected with old friends. The experience gained has been enriching. I have developed knowledge and clarity on some media concepts and been able to share insights on human rights to inform our collective decisions. The caucuses on identifying and isolating issues in every complaint filed were intense and sometimes emotional. However, the end of each case was enthralling and educative. My knowledge and skill sets were limitlessly expanded. I am grateful that I was privileged to serve the country in general, and the media stakeholder and I have done my best to safeguard human dignity even as I dispensed justice. I leave as a Certified Professional Mediator. I am forever indebted to the country and to my fellow commissioners, we have a permanent bond.”

Henry Omusundi Maina-Commissioner

CHAPTER THREE

ADJUDICATION SUCCESSES AND CHALLENGES

While the operative law, Media Council Act 2013, gives due prominence to the need for fostering mediation, there were instances when parties opted for adjudication. In some instances the parties who opted for mediation retained an adversarial approach leading to failure of those mediations which resorted back to adjudication. The Commission sought to improve its adjudication system by initiating the following processes and procedures:-

- a) **Panel hearings:** The Commission displayed flexibility by resorting to panel hearings and mentions to distribute workload and ease the pressure, hence expediting matters.
- b) **Practice directions**-the Commission adopted practice directions that guided on time allocations during hearing sessions in-order to streamline time-management and give parties equal opportunities to advance their cases.
- c) **Harnessing technology** -the Commission effectively harnessed the available technological tools at its disposal by incorporating e-justice through virtual hearings and mentions which aided in efficient disposal of matters with ease to the parties.
- d) **Administrative support**-the Commission utilized the administrative support granted by the Media Council of Kenya as its linkage to the industry and availed use of its offices.
- e) **Secretarial staff**-the council seconded staff to assist the Commission execute its mandate by way of secretarial services, transmission of orders and case file preparation.

- f) **Work-ethic**-the Commission members displayed remarkable work ethic by sacrificing their time to deal with matters arising even beyond the scheduled engagements.
- g) **Pool of diverse expertise**-the composition of the Commission exhibited a diverse range of professional skills and competencies which was helpful in dealing with complex matters requiring erudite decisions.
- h) **Teamwork**-the Commission members displayed team-work and respect of divergent views which greatly facilitated mutual decision making.

The Commission also faced several challenges that hampered its adjudications which included time constraints as some parties either delayed and/or required more time to comply with directions; participation of lawyers in the processes led to delays due to technicalities arising from interlocutory motions; service of process was a challenge since most parties failed to attend sessions; lastly there was often limited to write rulings arising from late filing of documents. Lastly, related challenges from a SWOT analysis included: -

- a) Perceived 'Pro or anti'-government decisions can make the Commission new enemies.
- b) Stakeholder perceptions – some sections of the media view the Commission as pro-government.
- c) Inadequate legal framework
- d) Insufficient resources for Public Awareness/Visibility
- e) Insufficient Remedies yet most litigants seek financial restitution.

CHAPTER FOUR

MEDIATION SUCCESSES AND CHALLENGES

This Commission takes great pride in being the first to utilize mediation as a dispute resolution mechanism. At the onset, all Commissioners underwent intensive training on mediation and earned the title “Certified Professional Mediators.” This was later supplemented by a refresher training, after many of the commissioners had attempted mediation. To date, the Commission has successfully mediated a total of 10 complaints. For this to happen, several success factors have been critical. To begin with, with all commissioners trained on mediation, they approached mediation with the understanding that the effectiveness of mediation depended on the skills and neutrality of the mediator. Commissioners also recognized the importance of providing a conducive environment for parties to discuss their concerns as they worked towards a mutually accepted settlement.

Secondly, most disputes handled through mediation take on average 4-6 weeks to complete as compared to adjudication which can go on for up to 12 weeks making it long and costly for most parties. Lastly, one of the successes of mediation is that once parties understand that the proceedings are confidential, they have been amenable to attempting mediation. Confidentiality allowed the parties to discuss sensitive matters without the fear of exposure. These successes have not been without challenges. Since mediation is a voluntary process, one party may be amenable to mediation and the other party may be unwilling to engage in mediation. If one party is not open to mediation, then the process does not commence as mediation is a party driven process. Additionally, owing to settlements being

confidential, there are no details on the processes, conversations and debates that take place during a mediation process that can be used to set legal precedents.

What is often availed at the end of a mediation is a settlement agreement which doesn't provide much detail and rightfully so. Commissioners will therefore exit the Commission with this knowledge that cannot be recorded for use by future Commissions. Lastly, the process of mediation is fluid and takes various forms. There is no one-size fits all and what worked for one mediated dispute may not work for another case. In the work of this Commission, mediation was carefully considered based on the specific circumstances and needs of the parties involved as well as their consent from the beginning. It was important that with each matter, those at the mediation table had to demonstrate that they had the authority to arrive at a settlement on behalf of their parties. Getting this authority in some cases took longer than had been anticipated as parties themselves needed to familiarize themselves with the process of mediation. Other success factors that aided the Commission to attain success included:-

- a) **Diversity of the team:** The Commission is comprised of individuals from diverse backgrounds, professions and expertise who are respected in their fields. They are largely considered independent and non-partisan.
- b) **Team work:** The spirit of harmony, cooperation, and collaboration among Commissioners led by the Chairperson and the Vice-Chairperson.
- c) **Secretariat support:** A supportive and approachable CEO of the Council. Staffing was also increased at the secretariat to improve work distribution and succession planning.
- d) **Use of ICT:** Leverage on ICT through use of online platforms to conduct proceedings thereby increasing reach virtually and lowering cost of mediation and adjudication whilst ensuring access to justice.

CHAPTER FIVE

5. CASE STATISTICS

In three years, the Commission has resolved 36 media related Complaints. Seventeen of these cases were resolved by way of adjudication while eight of them were resolved through mediation. Other six cases were withdrawn and three settled by the parties through mutual consent. Parties in two cases did not appear and therefore their cases were dismissed.

On appointment the Commission found a total of ten (10) pending cases from the previous Commission (2016-19). These included :-

1. **Brookside Dairy Ltd vs The Nation Newspaper. Case no. 6 of 2016**
2. **Brookside Dairy Ltd vs The Standard Newspaper. Case no. 8 of 2016**
3. **Tatu City & Two Others vs Nation Media Group & Six Others. Case no. 2 of 2018**
4. **Samuel Muigai vs Nation Media Group. Case no. 4 of 2018**
5. **Samuel Muigai vs The Standard Group. Case no. 5 of 2018**
6. **Priscilla Muthoni Maingi & Another vs New York Times & Another. Case no.**
7. **Bowry and Co. vs Nation Media. Case no. 9 of 2020**
8. **Nation Media Group & Another vs Tatu City Limited. Case no. 6 of 2018**
9. **Hon. Patrick J.O vs Nation Media Group Limited. Case no. 5 of 2019**
10. **Hon. Patrick J.O Otieno vs Radio Africa Group. Case no. 6 of 2019**

The Commission currently has four (4) on going cases which it is set to conclude by the end of its term. These cases include:

1. **Johnson Otieno Adera vs Nation Media Group & Two Others. Case no. 11 of 2023**
2. **David Mwangi Maina vs Mediamax T/a K24 Digital Media & Another. Case No. 12 of 2023**
3. **Linnet Nyasuguta Ongeni vs Seito Fm & Another. Case no. 13 of 2023**
4. **Raha Solution vs Nation Media Group & Another. Case no. 14 of 2023**

Case Summary

Below is a case summary of each matter handled by the Complaints Commission.

1. **Victor Odhiambo Ayieko & Another vs Nation Media Group & Two Others.** **Case no. 1 of 2022**

Particulars of Complaint: Nation Media Group aired a broadcast on 27th and 28th December 2021, alleging that the Complainants who happened to be advocates, had swindled and withheld money from a widow after she successfully won a compensation case against an insurance company. The Complainant stated that the Respondent used their pictures without consent, that the story was inaccurate and unfair, and that they were not given an opportunity to reply.

Infraction: Breaching the Code of Conduct for the Practice of Journalism in Kenya, particularly Clause 2 on Accuracy and Fairness, Clause 6 on Opportunity to Reply and Clause 21 on Use of Pictures and Names

Resolution: The respondent was found to have been in breach of the code of conduct for the practice of journalism in Kenya as had been indicated by the complainant. The respondent was to publish an apology and correction in a news bulletin with similar prominence as the impugned broadcast. The Commission also fined the respondent a cumulative fine of Ksh. 400,000.

Case Status: Matter dispensed with but the Respondents being dissatisfied with the decision of the Commission filed for a Judicial Review.

Duration of Case: 3 months.

2. Anjarwalla & Khanna LLP Vs the Standard Group Plc & Two Others. Case No. 10 Of 2023

Particulars of Complaint: On 27th April 2023, the Anjarwalla & Khanna LLP filed a complaint against the Standard Group Plc claiming that the Respondent published an article on their site titled *“How John Ngumi Law Firm pocketed sh. 6b in Telkom deal.”* That the Respondent failed to inform the Claimant that this Article was being published and that it mentioned them. That the article breached the Code of Conduct for the Practice of Journalism in Kenya, particular Clause 2 on Accuracy and Fairness, Clause 4 on Integrity, Clause 6 Opportunity to Reply and Clause 12 on Covering Ethnic, Religious and Sectarian conflict.

Infraction: Breached the Code of Conduct for the Practice of Journalism in Kenya, particular Clause 2 on Accuracy and Fairness, Clause 4 on Integrity, Clause 6 Opportunity to Reply and Clause 12 on Covering Ethnic, Religious and Sectarian conflict.

Resolution: Resolved via mediation on 21st September 2023

Case Status: Closed

Duration of Case: 2 months

3. Angaaf Radio Isiolo vs Hon. Mumina Bonaya. Case No. 9 Of 2023

Particulars of Complaint: On 5th April 2023 the Complainant filed a Counter Claim against the Respondent claiming that the Respondent published on Facebook a statement tarnishing the Claimant's reputation. That the Respondent called the Complainant's station manager threatening to close down their business which is the tenets of media freedom.

Infraction: The alleged breach was threats from a senior politician

Resolution: The matter was withdrawn by mutual consent on 5th September 2023

Case Status: Closed

Duration of Case: 4 months

4. Millicent Aoko Ogot vs The Elephant & Two Others. Case No. 7 Of 2023

Particulars of Complaint: The Complainant filed a complaint against the Respondent dated 17th March 2023. The Complainant claims that on or about 28th and 29th May 2021 the Respondent published an article titled "*Hard Labour: The Surrogacy in Kenya Part I and Part II*". That the contents of the articles were inaccurate, false, and misleading breaching the Code of Conduct for the Practice of Journalism in Kenya, particularly Clause 2 on Accuracy and Fairness

Infraction: Breaching the Code of Conduct for the Practice of Journalism in Kenya, particularly Clause 2 on Accuracy and Fairness

Resolution: Resolved via mediation on 6th October 2023 12th

Case Status: Closed

Mode: The Case was resolved through Mediation which took 3 months

Duration of Case: 5 months

5. Margaret Wamuyu Muthee vs The Star Newspaper & Another. Case No. 8 of 2023

Particulars of Complaint: On 21st March 2023, the Complainant filed a complaint against the Respondent claiming that on 12th February 2023 the Respondent published an article titled “*Court throws out case by a woman allegedly terminated for being pregnant*”. That the article mentioned the Claimant adversely without an opportunity to Reply. That the Respondent breached the Code of Conduct for the Practise of Journalism in Kenya, particular Clause 2 on Accuracy and Fairness and Clause 24 on Editors Responsibilities.

Infraction: Breached the Code of Conduct for the Practise of Journalism in Kenya, particular Clause 2 on Accuracy and Fairness and Clause 24 on Editors Responsibilities.

Resolution: Matter has been settled and an apology published.

Case Status: Closed

Mode: The Case was resolved through Mediation which took 3 months

Duration: 5 months

6. Central Bank of Kenya vs Nation Media Group Ltd & Two Others. Case no. 4 of 2023

Particulars of Complaint: On Wednesday 25th January 2023 and Thursday 26th January 2023 the Nation Media Group & Two Others published two articles on their websites titled, “*Wetangula: CBK’S large cash order, TSC delocalization policy illegal*”, and “*Parliament stops banks from asking client sources of cash deposits.*” The Complainant states that the headlines and the content of these articles were false, inaccurate and misleading.

Infraction: Breached Clause 2 on Accuracy and Fairness

Resolution: The Commission’s Determination was stayed by the Respondents pending a Judicial Review determination

Case Status: Pending delivery of a ruling

Duration of Case: 7 months

7. Dr. Patrick Njoroge vs Nation Media Group. Case no. 7 of 2021 (Contempt Proceedings)

Particulars of Complaint: On the 2nd of December 2021, the Complainant filed a Complaint stating that the Respondent published a story on 24th November 2021 titled, “*CBK Boss loses bid to testify in bank suit*”. That the content of this story breached the Code of Conduct for the Practice of Journalism in Kenya, especially Clause 2 on Accuracy and Fairness and Clause 3 on Independence, and that the apology and correction published by the Respondent was insufficient and “puny”.

Infraction: breached the Code of Conduct for the Practice of Journalism in Kenya, especially Clause 2 on Accuracy and Fairness and Clause 3 on Independence

Resolution: The Commission directed that the Respondent publish an apology in such a manner specified by the commission, the publication be done within 14 days from the date of the determination, that the publication to include the Complainants photograph, name and title, and that the Respondent's editor to ensure compliance of the Commission's orders.

Case status: The Respondent failed to comply with the Commission's orders with respect to timelines, to which the complainant filed Contempt of court proceedings, against the Respondent. The Commission having heard both parties found in favour of the Complainant/ applicant and made the following supplementary orders:

That the Respondent pays a fine of Ksh. 250,00 for non- compliance with the timelines and a further fine of Ksh. 250,000 for failing to publish the apology as directed by the Commission.

Lastly the Commission issued a caution to the Editor for failure to discharge his responsibility under Clause 24 of the Code of Conduct for the Practice of Journalism in Kenya.

Duration of Case: 8 months

8. Kimutai Kirui vs Mediamax T/a Emoo Fm & Two Others. Case no. 2 of 2023

Particulars of Complaint: The Complainant filed a Complaint on 1st February 2023 stating that on the 8th of December 2023, on the Respondent show, a guest interviewee made the comments to the effect that, *“that he (complainant) was a Kipsigis who should be dealing with tea plucking machines other than inciting youth in Eldoret.”* The Complainant claimed that these remarks were misleading, inflammatory, biased, and promoted ethnic animosity in that he was profiled in the show.

Infraction: Breach of Code of Conduct for the Practice of Journalism in Kenya, in particular, Clause 2 on Accuracy and Fairness, Clause 4 (1) on Integrity, Clause 5 (c) on Accountability and Clause 12

Resolution: The Commission found that the Respondent did not breach any Clause under the Code of Conduct for the Practice of Journalism in Kenya.

Case Status: Closed

Duration of Case: 4 months

9. Calisto Okisa vs The Standard Group Plc & Two Others. Case no. 6 of 2021

Particular of the Complaint: The Complainant filed a Complaint against the Respondent on 8th October 2021 stating that the Respondent published a story on their platform on 21st September 2023 titled, “*Rare Ovarian Cancer in Baby who got Menses’ at Four Months*”. The Complainant stated that this article was published without his consent as the parent of the minor. That the content of the article breached the Code of Conduct for the Practice of Journalism in Kenya, in particular Clause 2 on accuracy and fairness, Clause 4 on Integrity, Clause 6 on Opportunity to reply and Clause 9 on misrepresentation.

Infraction: Breached the Code of Conduct for the Practice of Journalism in Kenya, in particular Clause 2 on accuracy and fairness, Clause 4 on Integrity, Clause 6 on Opportunity to reply and Clause 9 on misrepresentation.

Resolution: The Commission found that there was a breach of the Code of Conduct for the Practice of Journalism in Kenya. The Commission ordered that the Respondent to effect a remedial child protection measure by editing the online edition of the subject article to remove the child’s identity and also pixelate the mother’s photograph to guard against referential identity.

Case Status: Closed

Duration of Case: 4 months

10. Article 48 Initiative vs The Standard Group Plc & Two Others. Case no. 5 of 2021

Particulars of Complaint: On the 7th of October 2021 the Complainant filled a Complaint against the Respondent stating that on 21st September 2021 the Respondent published an article titled, *“Inmates held at the president pleasure suffer dose of injustice,”* and on 22nd September 2021 the Respondent further published an article titled, *“Police still follow colonial rule book when dealing with mentally ill suspects”*. The Complainant claimed that these two articles breached the Code of Conduct for the Practice of Journalism in Kenya.

Infraction: Breached Clause 2 on Accuracy and Fairness, Clause 4 on Integrity, Clause 6 on Opportunity to Reply, Clause 8 on Confidentiality, Clause 21 on Use of Pictures and Names and Clause 22 on Innocent Relatives and Friends

Resolution: The Commission found that the Article published was in public interest. The Commission found that there was no violation of the Code of Conduct for the Practice of Journalism in Kenya and therefore declined to impose a fine pursuant to section 38 (1) (f)

Case Status: Closed

Duration of Case: 11 months

**11. Media Council of Kenya vs Sauti Ya Mwananchi Radio and Tv Ltd & Another.
Case no. 6 of 2023**

Particulars of Complaint: The Media Council of Kenya lodged a Complaint against the Respondent that based on diverse dates between 13- 16th September 2022, 10th October 2022, and 6th February 2023, the Respondent caused to be broadcast a show titled “*Tiba Kiassili Show*”, wherein the Respondent hosted persons purporting to be doctors (Traditional healers) who treat myriad of medical and social problems. That the content of the broadcasts were in breach of Code of Conduct for the Practice of Journalism in Kenya, in particular, Clause 2 (1) (8) on Accuracy and Fairness, Clause 4 (1) on Integrity, Clause 5 (c) on Accountability and Clause 10 (1) on Obscenity, Taste and Tone in Reporting.

Infraction: Breach of Code of Conduct for the Practice of Journalism in Kenya, in particular, Clause 2 (1) (8) on Accuracy and Fairness, Clause 4 (1) on Integrity, Clause 5 (c) on Accountability and Clause 10 (1) on Obscenity, Taste and Tone in Reporting.

Resolution: The Commission established that the airing of content is in breach of the Media Council Act 2013 and the Code of Conduct for Practice of Journalism in Kenya. The Commission gave liberty to institute multiagency regulatory sanctions leading to the cancellation of the Respondent’s accreditation, and file and commence criminal proceedings through the Office of Director of Public Prosecutions pursuant to section 48 of the Media Council Act 2013. The Commission also issued orders for the Respondent to pay a fine of Ksh. 250, 000 to be considered a debt owed to the Council under Section 38 (1) (f) of the Media Council Act 2013.

Case Status: Closed but the Respondent has appealed against the decision of the Complaints Commission.

Duration of Case: 3 months

12. Priscilla Muthoni Maingi & Another vs Kimiko De Freytas - Tamura & Another. Case No. 1 Of 2019

Particulars of Complaint: The Complainant filed a Complaint against the Respondent on 23rd January 2019. The Complainant claimed that on the 15th of January 2019, following a terrorist attack at Dusit 2 Hotel located along Riverside drive in Nairobi. A journalist, Kimiko de Freytas – Tamura with the New York Times published an article on the New York Times Website titled “*Shabab Claim Responsibility for Deadly Assault Nairobi Hotel Office Complex*”, this article was also published on the print version of said publication, under the title “*Militant Stage Deadly Assault at Kenyan Hotel Office Complex*”. The Complainant stated that the content of these article contained among other things 4 photographs of victims and survivors of the attack who were injured and killed in a gruesome manner. That the publication of these pictures was dehumanising, insensitive, traumatic and violation of the victims and survivors’ rights of dignity and privacy, breaching the Code of Conduct for the practice of Journalism in Kenya.

Infraction: Breached Code 15 on Intrusion into Grief of the victims of the terror attack by publishing these photographs

Resolution: The Commission concluded that the Respondent had violated Code 15 on Intrusion into Grief of the victims of the terror attack by publishing these photographs. The Commission issued a public reprimand as regards to the Respondents violation of Clause 15 of the Code of Conduct for the Practise of Journalism in Kenya, pursuant to Section 38 (1) (d).

Case Status: Closed but the matter is under Judicial Review

Duration of Case: 4 years. This matter was carried over from the previous commission whose term lapsed before concluding the matter and there was a long gap before the appointment of the present Commission.

Duration of Case under the Members Tenure: 1 Year

13. Ken Indimuli vs Mediamax Network T/A Milele Fm & 3 Others. Case No. 6 Of 2022

Particulars of Complaint: The Complainant filed a complaint against the Respondent on 22nd September 2023 claiming that the Respondent had aired and published a telephone conversation with the Respondent accusing him of inappropriate behaviour with a client. That the Respondent led him to believe that the phone conversation was not being recorded and proceeded to ask the complainant sensitive questions about a claim by one Sheila, who had stated that he had requested for sexual favours in return for a job opportunity. The Complainant alleged that the content of that show breached Clause 2 (1), Clause 5 (a) and (c), Clause 13 (1) and Clause 14 (3) of the Code of Conduct for the Practice of Journalism in Kenya.

Infraction: Breached Clause 2 (1), Clause 5 (a) and (c), Clause 13 (1) and Clause 14 (3) of the Code of Conduct for the Practice of Journalism in Kenya.

Resolution: Dismissed for non-attendance

Case Status: Closed

Duration of Case: 5 months

14. Charles Chege Gitau vs Royal Media Service T/A Inooro Tv. Case No. 5 Of 2023

Particulars of Complaint: On 21st February 2023 a Complainant filed against the Respondent claiming that on 20th January 2023, the respondent on their 9pm evening show aired a recording of the Complainant without his Consent. That the recording was aired on 20th January 2023 during the 9 pm news on their widely watched and popular show named “*Wathiire Kuu*”. That the contents of the show breached the Code of Conduct for the Practice of Journalism in Kenya, especially Clause 2 on Accuracy and Fairness, Clause 12 on Covering Ethnic, religious, and sectarian conflict, and Clause 26 on Hate Speech.

Infraction: That the contents of the show breached the Code of Conduct for the Practice of Journalism in Kenya, especially Clause 2 on Accuracy and Fairness, Clause 12 on Covering Ethnic, religious, and sectarian conflict, and Clause 26 on Hate Speech.

Resolution: Settled by mutual consent on 18th May 2023

Case Status: Closed

Duration of Case: 3 Months

15. Hon. Mumina Golla Bonaya vs Angaaf Radio Isiolo. Case No. 03 Of 2023

Particulars of Complaint: On February 2023, the Complainant filed a Complaint against the Respondent claiming that on 14th February 2023 the Respondent published on their Facebook page an Article titled “*Where is Isiolo North NG- CDF Bursary*”. The Respondent further published an opinion poll on Facebook Isiolo County asking the audience who they trust more, the claimant or themselves. The Complaint alleges that these publications were published without her consent and without any verification, breaching Clause 2 on Accuracy and Fairness, Clause 3 on Independent, Clause 4 on Integrity, Clause 6 on Opportunity to Reply, Clause 12 on Covering Ethnic and Sectarian Conflict and Clause 21 on the Use of Pictures and Names.

Infraction: Breaches Clause 2 on Accuracy and Fairness, Clause 3 on Independent, Clause 4 on Integrity, Clause 6 on Opportunity to Reply, Clause 12 on Covering Ethnic and Sectarian Conflict and Clause 21 on the Use of Pictures and Names.

Resolution: This Case was Dismissed for non-attendance on 8th June 2023

Case Status: Closed

Duration of Case: 4 months

16. Marble Arch Hotel Limited vs Nation Media Group Ltd & Another. Case No. 4 Of 2022

Particulars of Complaint: The Complainant filed a complaint against the Respondent on 3rd June 2022. The Complainant stated that on 31st May 2022 the respondent caused a story to be published titled “*Tycoon’s bid to halt Marble Arch Hotel’s demolition rejected*”, this headline also included a Photo of the Complainants Hotel.

Infraction: This was a breach of the Code of Conduct for the Practice of Journalism in Kenya, particular Clause 1 on Accuracy and Clause 20 on Use of Pictures and Name

Resolution: This case was withdrawn by the Complainant by a letter dated 26th September 2022

Case Status: Closed

Duration of Case: 3 months

17. Meditest Diagnostic Services Ltd vs Nation Media Group Ltd & Another. Case No. 3 Of 2022

Particulars of Complaint: on 21st April the Complainant filed a Complaint against the Respondent stating that on 20th April 2022 the Respondent published articles titled “*A special Nation Investigation: Scandal of Level 5 City Hospital without ICU and Puzzle: Fake Covid test hospital raised to Level 5*”. That the articles were in breach of the Code of Conduct for the Practice of Journalism in Kenya, particular Clause 1 on Accuracy and Fairness, Clause 3 on Independence, and Clause 4 on Accountability.

Infraction: The articles were in breach of the Code of Conduct for the Practice of Journalism in particular Clause 1 on Accuracy and Fairness, Clause 3 on Independence, and Clause 4 on Accountability.

Resolution: This case was resolved through Mediation. Settlement Agreement filed on 5th August 2022

Case Status: Closed

Duration of Case: 4 months

18. Taifa Gas Group Ltd & Two Others vs Nation Media Group. Case No. 5 Of 2022

Particulars of Complaint: A Complaint was filed by the Complainant on 7th September 2023. That Complaint alleged that the Respondent published two Articles titled “*Kenya freezes Tanzania tycoon’s gas plant*”, and “*Kenya’s cooking gas fears as Oman flags Tanzania Cargo*”. The Complaint stated that these Articles were inaccurate, false, and misleading pursuant to the Code of Conduct for the Practice of Journalism, under Clause 2 on Accuracy and Fairness.

Infraction: The Code of Conduct for the Practice of Journalism in Kenya, under Clause 2 on Accuracy and Fairness.

Resolution: This case was resolved via Mediation. Settlement Agreement filed on 23rd January 2023

Case Status: Closed

Mode: The Case was resolved through Mediation which took 3 months

Duration of Case: 4 months

19. Hon. Ambassador Ukur Yatani vs Nation Media Group & Another. Case No. 3 Of 2021

Particular of Complaint: On 12th April 2021 the Complainant filed a complaint before the Commission relating an article that was published by the Respondent on 18th March 2021. The article published was titled “*Us Reveals Kenya Secret Sh. 139Bn Corona Virus Loan*”. The Complainant stated that the article was malicious, inaccurate, and misleading.

Infraction: The breach on the Code of Conduct for the Practice of Journalism in Kenya, on this case include, Clause 2 on Accuracy and Fairness, Clause 4 on Integrity, and Clause 6 on Opportunity to Reply

Resolution: The Commission found that the Respondent was in violation of on Rule 2 (11) on publication of misleading headlines, of the Code of Conduct for the Journalism in Kenya and therefore ordered the Respondent to publish a correction by way of clarification with respect to the headlines in a subsequent story in the same newspaper.

Case Status: Closed

Duration of Case: 11 months

20. Africa Brotherhood Church vs Headlink Publishers Limited T/A Citizen Weekly. Case No. 1 Of 2021

Particular of Complaint: On 21st January 2021 the Complainant filed a complaint against the Respondent claiming that the Respondent published an article on 25th - 31st January 2021 titled “*Sex escapades rock church Tv Station*”. That this Article was inaccurate, sexist, and biased, therefore in breach of the Code of Conduct for the Practice of Journalism in Kenya.

Infraction: Breach of the Code of Conduct for the Practice of Journalism in Kenya, especially Clause 2 on Accuracy and Fairness and Clause 16 on Gender non-discrimination

Resolution: The case was Dismissed by the Commission for non-attendance on 16th December 2021

Case Status: Closed

Duration of Case: 11 Months

21. Samuel Muigai vs Nation Media Group. Case No. 4 of 2018

Nature: The Complainant lodged a complaint against the Respondent on the 21st of September 2018. Stating that the Respondent had published a story on titled “*Kibra women show that united, we can all be homeowners*”. That the story was inaccurate, biased, and false breaching the Code of Conduct for the Practise of Journalism in Kenya.

Infraction: Breach of the Code of Conduct for the Practice of Journalism in Kenya, especially Clause 2 on Accuracy and Fairness.

Resolution: The Commission found that the Respondent had breached the Code of Conduct for the Practice of Journalism in Kenya. The Commission therefore ordered that the Respondent pay a fine of Ksh. 300,000 due to the Council. That the Respondent is to publish an apology and correction bearing the same prominence as the offending Article.

Case Status: Closed

Duration of Case: 3 years

Duration of Case under the Members Tenure: 1 Year

22. Samuel Muigai vs The Standard Group. Case No. 5 Of 2018

Nature: By a Complaint filed on 18th February 2018, the Complainant alleged that the Respondent had aired a story on their Kenya Television Network (KTN) Station on a show titled “*The Property Show*”. The Complainant claimed that the building and development shown on the show belonged to the members of the Royal Housing

Co-Operative Society Limited. The Complainant stated that the publication of the said building led to a huge financial loss for the Housing Co- operative Society due to fear and frustration amongst the members. This the Complainant alleged there was a breach of the Code of Conduct for the Practice of Journalism in Kenya, especially Clause 2 on Accuracy and Fairness.

Infraction: Breach of the Code of Conduct for the Practice of Journalism in Kenya, especially Clause 2 on Accuracy and Fairness.

Resolution: The Commission found that the Respondent was in breach of the Code of Conduct for the Practice of Journalism in Kenya and therefore ordered that the Respondent publish a Clarification. That the Clarification be run on subsequent edition of the Property Show on KTN

Case Status: Closed

Duration of Case: 3 years

Duration of Case under the Members Tenure: 1 Year

23. James Ndungú Gethenji vs The Star Newspaper & Two Others. Case No. 4 of 2021

Particulars of Complaint: On 6th April the Complainant filed a Complaint against the Respondent claiming that the Respondent had published various articles about ongoing disputes in court pitting the Complainant against other parties. That these articles were misleading, unfair, biased, and inflammatory breaching the Code of Conduct for the Practice of Journalism in Kenya.

Infraction: The breach on the Code of Conduct for the Practice of Journalism in Kenya on this case include, Clause 2 on Accuracy and Fairness and Clause 4 on Integrity

Resolution: This Case was resolved through Mediation. The Certificate of Acceptance of Settlement signed on 24th January 2022

Case Status: Closed

Duration of Case: 7 months

Mode: The Case was resolved through Mediation which took 3 months

24. Bowry And Co. Advocates vs Nation Media Group. Case No. 9 Of 2020

Particulars of Complaint: A complaint was filed by the Complainant against the Respondent alleging that on 4th June 2020 the Respondent published an article titled “*Woman charged with stealing from former Miss World*”, on their online platform. That this article was misleading, biased, and inaccurate breaching the Code of Conduct for the Practice of Journalism in Kenya.

Infraction: The breach on the Code of Conduct for the Practice of Journalism in Kenya on this case include, Clause 2 on Accuracy and Fairness and Clause 4 on Integrity

Resolution: This Case was resolved through Mediation. The Certificate of Acceptance of Settlement signed on 11th November 2021.

Case Status: Closed

Duration of Case: 2 years

Duration of Case under the Members Tenure: 1 Year

Mode: The Case was resolved through Mediation which took 3 months

25. Brookside Dairy Limited vs The Standard Newspaper. Case No. 6 Of 2016

Particulars of Complaint: On 5th May 2016 the Complainant filed a complaint against the Respondent claiming that the Respondent published an article on 19th August 2015 titled, *“Cord pushes for rallies on Friday as it threatens Court and Mass Action over importation of Uganda Sugar”*. That this Article was in breach of the Code of Conduct for the Practice of Journalism as it was Misleading, Inaccurate, Inflammatory and Biased. The Complainant was further aggrieved as the Respondent did not give then a right to reply.

Infraction: The breach on the Code of Conduct for the Practice of Journalism in Kenya on this case include, Clause 2 on Accuracy and Fairness, Clause 4 on Integrity, and Clause 6 on Opportunity to Reply

Resolution: Case was resolved through Mediation. Certificate of Acceptance of Settlement signed on 27th January 2022

Case Status: Closed

Duration of Case: 6 years

Duration of Case under the Members Tenure: 1 Year

Mode: The Case was resolved through Mediation which took 3 months

26. Johnson Otieno Odera vs Nation Media Group Plc. Case no. 11 of 2023

Particulars of Complaint: The Complainant filed a complaint against the Respondent dated 29th August 2023. The Complaint form claim that the Respondent published an article titled ‘Anti- Counterfeit Agency Faces sh. 600m Botched Seizure Bill’. That the content of the Article breached the Code of Conduct for the Practice of Journalism.

Infraction: The Complainant alleges that the Respondent breached the Code of Conduct for the Practise of Journalism in Kenya, mainly Clause 2 (1) on Accuracy and Fairness, Clause 4 (1) on Integrity and Clause 6 (1) on Opportunity to Reply.

Resolution: The Commission ordered that the Respondent publish an apology and correction within 30 days of the Determination and that the Respondent to pay a fine of Ksh. 50, 000 due to the Media Council of Kenya

Case Status: Closed

27. David Mwangi Maina vs Mediamax T/a K24- Digital Media & Another. Case no. 12 of 2023

Particulars of Complaint: The Complainant filed a Complaint against the Respondent dated 16th August 2023 alleging that the respondent had published a story on their online platform alleging his son had died by suicide which story was

false and misleading. and that they never sought his opinion before publishing the story.

Infraction: That the Respondent breached the Code of Conduct for the Practice of Journalism especially Clause 1 on Accuracy and Fairness, Clause 4 on Integrity, Clause 6 on Opportunity to Reply and Clause 15 on Intrusion into Grief and Shock

Resolution: The Commission ordered the Respondent to reword the Apology published and publish the reworded apology within 7 days. A recommendation was also made to the Media Council of Kenya to formulate a programme of targeted training for journalists.

Case Status: Closed

28. Linet Nyasuguta Ongeni vs Seito Fm & Another. Case no. 13 of 2023

Particulars of Complaint: The Complainant lodged a complaint against the Respondent on 28th August 2023, claiming that on the 19th of February 2023 the Respondent broadcast a Betting Game requiring the participant to forward money to the station in order to win a larger sum where the listener was the first to send this money. That the Complainant was the first to forward her money to the Respondent and the host announced as much. That despite announcing the Complainant as the winner, the Respondent failed and or refused to release the funds won.

Infraction: The Complainant alleges that the Respondent breached the Code of Conduct for the Practice of Journalism in Kenya, mainly Clause 4 (1) on Integrity and Clause 5 on Accountability

Resolution: The Commission fined the Respondent a total of Kshs. 100,000 and directed that the Media Council of Kenya to come up with clear standards to guide media houses and journalist on radio and television on betting programmes.

Case Status: Closed.

29. Raha Solution vs Nation Media Group. Case no. 14 of 2023

Particulars of Complaint: The Complainant filed a complaint against the Respondent dated 8th September 2023, claiming that the Respondent had breached the code of conduct for the Practice of Journalism in Kenya by publishing an Advertisement on behalf of the Complainant on 27th June 2023. That the format and context of the publication was contrary to the agreement between the Complainant and the Respondent.

Infraction: That this publication breached the Code of Conduct for the Practice of Journalism in Kenya especially, Clause 5 on Integrity and Clause 24 (1) on Editors Responsibilities.

Resolution: Closed

Case Status: Case struck out on a Preliminary objection

18.2 Cases withdrawn

1. Tatu City & 2 Others vs Nation Media Group & Six Others. Case no. 2 of 2018
2. Nation Media Group & 6 Others vs Tatu City Limited. Case no. 6 of 2018
3. Hon. Patrick J. O Otieno vs Nation Media Group Limited. Case no. 5 of 2019
4. Hon. Patrick J. O Otieno vs Radio Africa Group Limited. Case no. 6 of 2019

18.3 Cases under Judicial Review

Being dissatisfied with the decision of the Commission, the Respondents in the below cases have filed for Judicial review before the High Court of Kenya

1. **Media Council of Kenya vs Sauti ya Mwananchi & Another. Case no. 6 of 2023**
2. **Priscilla Muthoni Mwangi & Another vs Kimiko De Freytas. Case no. 1 of 2019**
3. **Central Bank of Kenya vs Nation Media Group & Two Others. Case no. 4 of 2023**
4. **Victor Odhiambo Ayieko & Another vs Nation Media Group & Two Others. Case no. 1 of 2022**
5. **Hon. Ambassador Ukur Yatani vs Nation Media Group & Two Others. Case no. 3 of 2021**

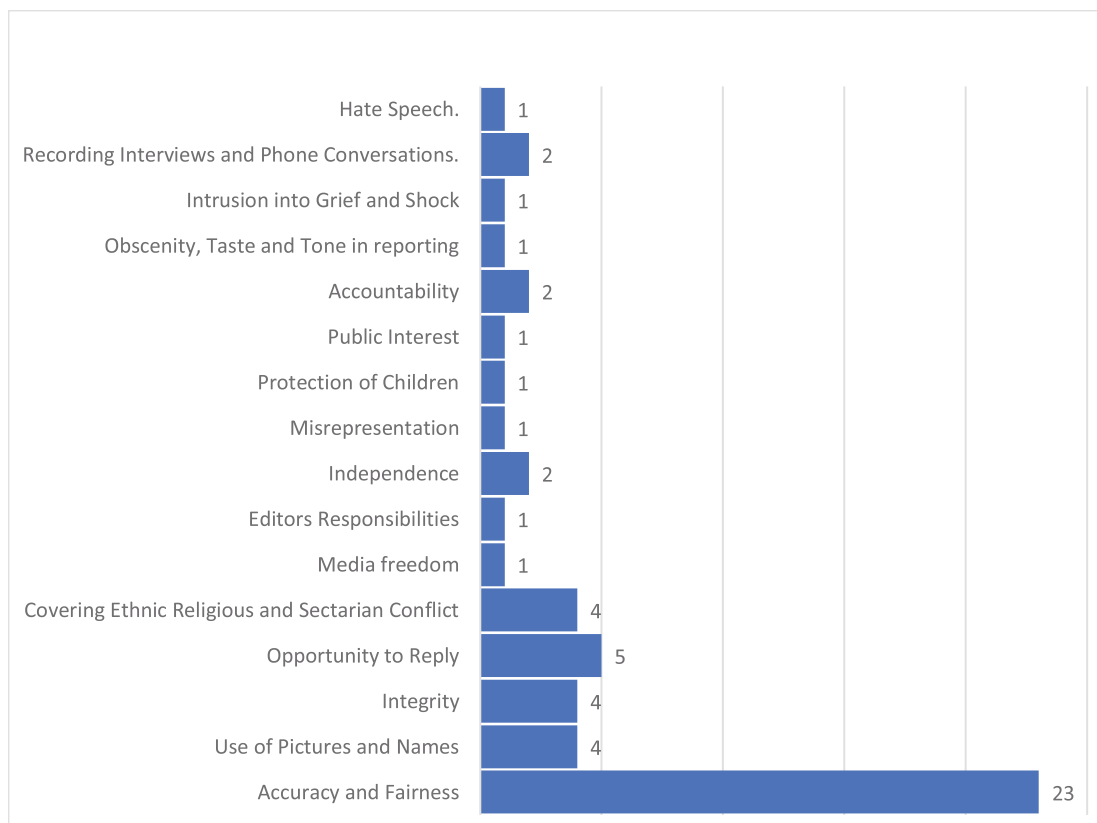
18.4 Distribution of Cases

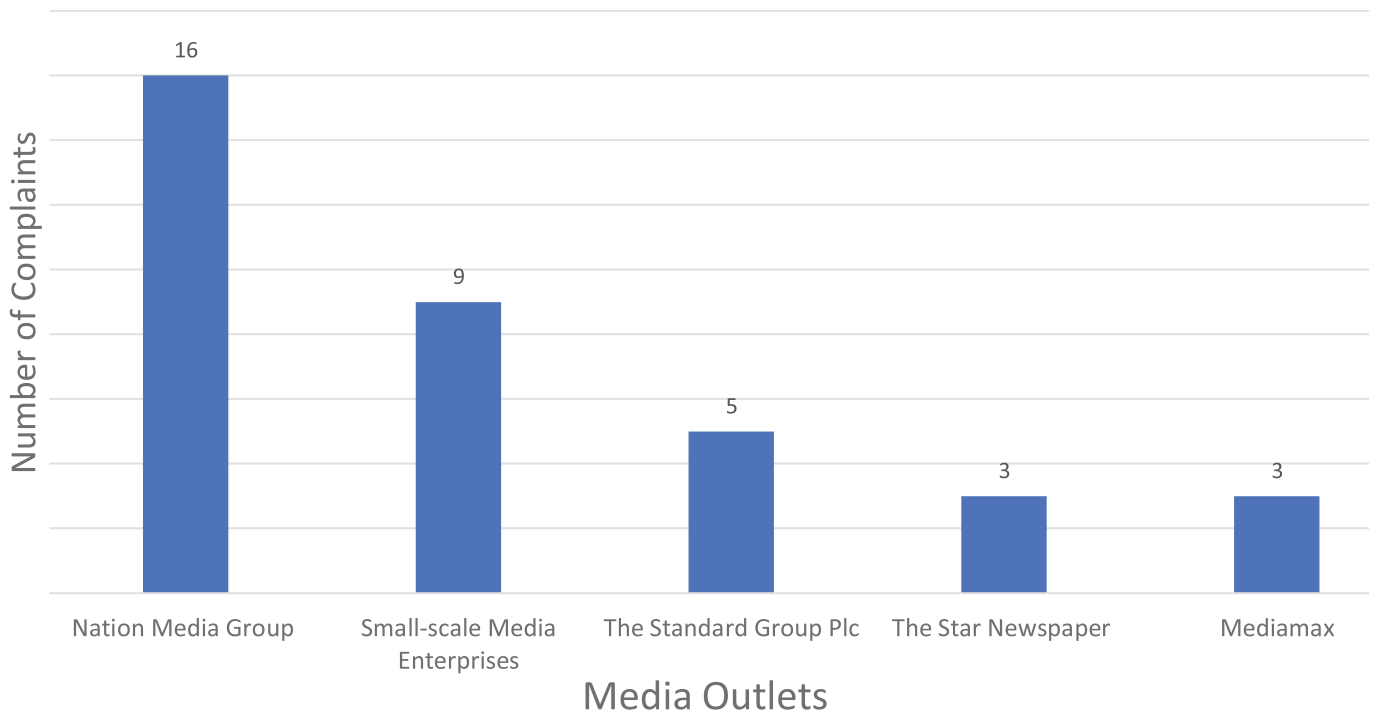
1. Nation media group plc has the highest number of complaints filed against them during the current tenure of the Complaints. According to the Media Complaints commission statistics under this tenure, the Complaints filed against Nation media group is 16.
2. The Second Media House that has a high amount of Complaints is The Standard Group Plc, with a number of 5 Complaints.
3. The Star Newspaper and Mediamax tie in the number of Complaints filled against them, which is 3.
4. The Complaints Commission also received Complaints this year for small independent Media Houses. The amount of Complaints filed against these Media Houses are 9 in number. These stations where mostly being complained of due to unscrupulous practices, such as airing herbal medicine men and women to “deceive” their audience.

5. A majority of the individuals filing Complaints against the media houses and journalists were men. During the life of this Commission, only five of the Compliants received were filed by women. These are listed below.

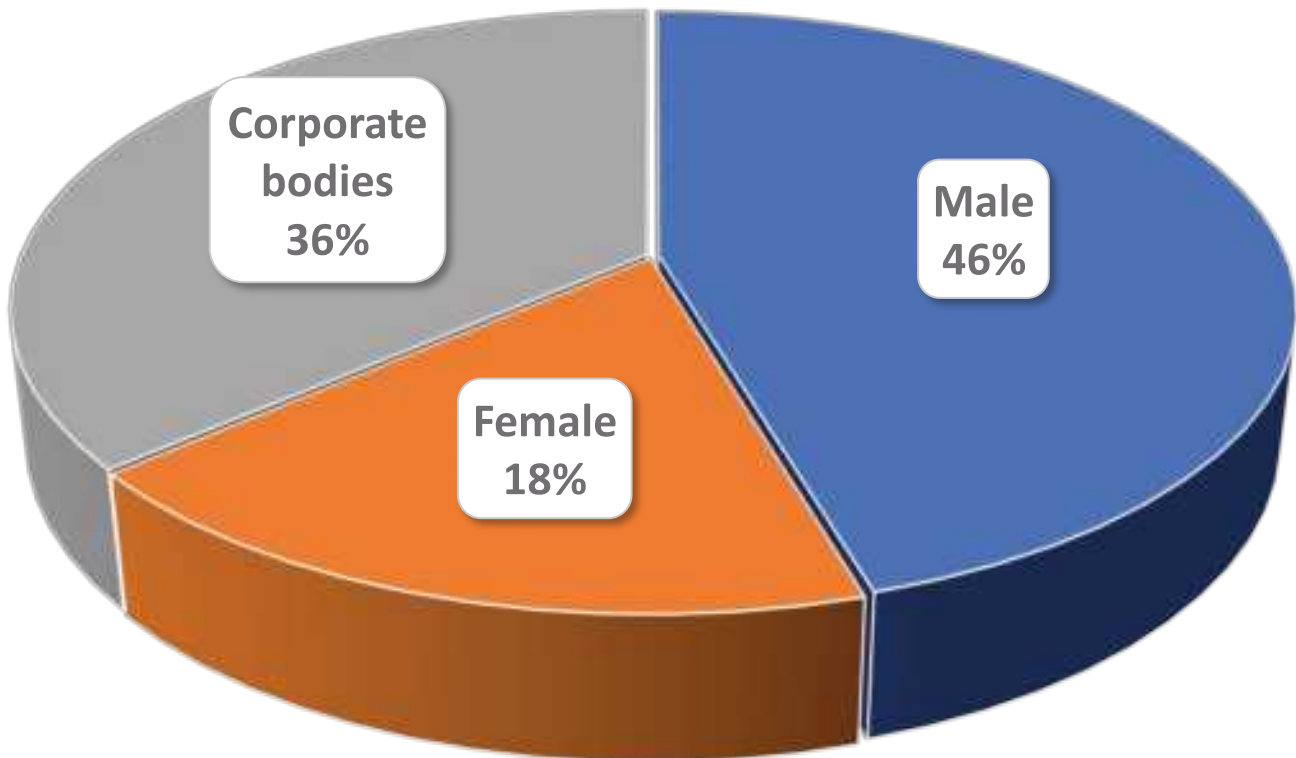
- I. Margaret Wamuyu Muthee vs The Star Newspaper & Another. Case no. 8 of 2023
- II. Millicent Aoko Ogot vs The Elephant & Two Others. Case no. 07 of 2023
- III. Article 48 Initiative vs The Standard Group Plc & Two Others. Case no. 5 of 2021
- IV. Priscilla Muthoni Mwangi & Another vs Kimiko Dey- Freytas Tamura. Case no. 01 of 2019
- V. Hon. Mumina Bonaya vs Angaaf Radio Isiolo. Case no. 3 of 2023.

18.5 Breaches to the Code of Conduct for the Practice of Journalism in Kenya 2020/2023





19.0 Distribution of Media - Related Complaints by Gender and Corporate Bodies (2020-2023)



19.1 Comparative Average Turnaround Time in Months



20. CHAPTER SIX

21. PUBLIC ENGAGEMENTS

1. TRAININGS AND CAPACITY BUILDING

1.0 Induction exercise

The Council conducted an induction exercise immediately after the appointment of the Chairperson and Members of the Complaints Commission. This exercise took place in December 2020. The induction of the Complaints Commission was facilitated by highly experienced senior Counsels and instructors from the Judicial Training Institute (JTI). The exercise gave the Commission members all the information and assistance they needed to help the members understand the Complaints Commission, the environment in which the Commission operates, and their role in making the Commission deliver on its mandate.

1.1 Mediation Training

In order to equip the members with the necessary skills to conduct mediation as contemplated in section 36 of the Media Council Act, the Commission underwent a seventy-hour intensive mediation training by Mediation Training Institute International at the onset of their appointment. This training gave the members the necessary skills that enabled to conduct mediations successfully.

Members also took a mediation refresher course where they got to share their experiences, after most of the members had attempted mediation. This training imparted advanced mediation techniques that assisted in breaking potential and existing impasses leading to quick resolution of disputes.

1.2 Media Development in a Democratic Framework (ITP Media)

In the pursuit of enhancing the Commission's capabilities and understanding of media governance, two Commissioners had the privilege of extensively participating in the International Training Program (ITP) on Media Development in a Democratic Framework. This comprehensive program spanned various critical topics, including media reforms, media relations, gender equality in media regulation and the future of journalism, and sustainability.

The participation of the commissioners in cohorts 4 and 5 of this program significantly enriched their perspectives on media regulation, the role of media in a democratic society, and the imperative of safeguarding freedom of media, expression, and access to information, as enshrined in the Constitution of Kenya.

1.3 Judgement Writing Master Class

In appreciation of the skills needed to for members of the Commission to effectively adjudicate in cases before them, members of the Commission were taken through master class in judgement writing. This process encompassed a meticulous approach to laying out the issues systematically, conducting thorough analyses to assess breaches of the Code, and forging a distinct link between pleadings, allegations, and testimony. The Judgment Writing Master Class proved transformative for the Commission's competence. It engendered a profound understanding of the intricate dynamics inherent in case analysis, precise issue determination, crafting effective remedies, and a resolute dedication to justice.

1.4 Awareness Campaigns

6.5.0 Radio and TV appearances

The Complaints Commission realized that many parties including core stakeholders are not aware of its existence or if they do are not aware of its mandate. To cure this, the Commission embarked on a robust awareness campaign through radio and television. To this end the Commission or its representative appeared on various tv and radio station including but not limited to, Spice Fm, Capital FM, Radio Ramogi, Lulu FM, Jahazi FM, SBS Radio, Sheki FM, Radio Mtaani, KBC television, KTN Television about Citizen TV and Nation Television to sensitizes the General public about the Commissions existance and its mandate. As a result, the Commission has seen an increase in the number of complaints lodged during its tenure.

6.5.1 Targeted Stakeholder Engagement

The Commission has participated in various Stakeholder engagements to sensitize the participants on the Commission's mandate. These include, the Law Society Annual Conference, the Kenya Editors Annual Conference, (Editors) the World Press Freedom Day in Zanzibar (Regional Stakeholders), the launch of Millennials and Digital natives' media consumption habits research and launch of the Sustainable Journalism in Practice Conference both held at the Agha Khan University (Academia) and Various Roundtable discussion with media stakeholders

in the Country, the International Day to End Impunity against journalists(Human Rights Groups), CIARB Conference(Arbitrators and Mediators).

6.5.2 Collaborations and Partnerships

The Commission has also endeavored to build partnerships of mutual interest. During its tenure, it engaged the following institutions/bodies/offices/agencies.

- I. The Kenya Law Reform Commission(Kenya Law) to explore the publication of a Complaints Compendium
- II. The Chartered Institute of Arbitrators, Nairobi Branch to consider areas capacity building for Commissioners.
- III. An exploratory capacity building meeting with the European Space Agency to share experiences.
- IV. A consultative meeting with Media Council of Malawi to discuss the Kenyan model of media regulation and best practices.
- V. A courtesy call on the Office of the Registrar of the Judiciary Kenya to prompt a discussion on the recognition of the Complaints Commission as the primary media dispute resolution organ.
- VI. A courtesy call on the Principal Secretary State Department of Broadcasting, to share experiences and to explore ways of strengthening the Commission.

22. CHAPTER SEVEN

23. COMPLAINTS COMMISSION BUDGET

The Complaints Commission during its term faced constraints in fulfilling its public sensitization mandate due to inadequate funding. A huge gap identified was low public awareness and limited public engagements to enhance its visibility. The major challenge the commission has faced is inadequate funding for public engagements hence it was constrained in expanding access to justice through devolved hearings. The Complaints Commission is expected to serve the entire nation, however, with a modest annual budget of **Ten Million Shillings (Kshs 10,000,000)** for its core mandate relating to hearings and mediations.

Nonetheless, the Council has supplemented this budget annually with an additional allocation of Ten Million shillings, annually to facilitate outreach programmes, capacity building and other activities of the Complaints Commission, whereas this is appreciated, it is not sufficient to support the enormous national mandate of the Complaints Commission.

24. CHAPTER EIGHT

25.8. WAY-FORWARD

25.0 8.0 Using lessons learned to develop best practice in media complaints resolution.

Having been in office and served for three years the outgoing Commission has adjudicated and mediated a considerable volume of jurisprudential decisions, showing how the Complaints Commission applies the Code of conduct to the practice of journalism in Kenya to specific questions and issues. The Commission has gradually used the lessons from these decisions to expand its work beyond handling complaints and building a portfolio of case studies for schools of journalism. Several determinations of the Complaints Commission directed the Media Council of Kenya departments to develop targeted training programs for journalists and editors which enhances the capacity of practitioners to sustain ethical journalistic practice and to ensure that published material complies with the Code of conduct for the practice of Journalism in Kenya.

25.1 8.1 Recommendations

A SWOT analysis carried out did isolate certain areas in need of strengthening in order to make the Commission functionally independent and efficient. These include: -

- a) Secretariat (strengthening)-The secretariat requires dedicated staff in terms of process servers and registry staff responsible for file data entry and record keeping.

- b) Communications strategy- The Commission requires trained and dedicated staff to handle its media visibility and leverage various platforms to enhance its public visibility.
- c) Review of the Media Council Act 2013-will give an opportunity for streamlining administrative structures and financial provisions.
- d) Review of the Code of Conduct for the Practice of Journalism in Kenya-will give an opportunity for updating ethical values in terms of rapidly advancing technology.
- e) Rules of Procedure-the Commission is in need a robust procedural rules regime that will fill in the gaps in terms of reliefs granted.
- f) Codification of the Complaints Commissions Decisions/ Determinations through publication is vital in expanding public sensitization.

25.2 8.2 Summary

The Complaints Commission remains committed to continuing in its role of enforcing the code of conduct for the practice of journalism in an impartial, independent, thorough, and dispassionate manner. The Commission considers that the current legal framework and complaints system has served the media industry relatively well over the past three and has enabled the Commission to provide accessible, independent, free and informal complaint processing mechanism in an efficient and extremely cost-effective way.

MEDIA

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