

CHAPTER 411B**THE MEDIA ACT**

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PRACTICE OF JOURNALISM

6 of 2009.

CHAPTER 411B**THE MEDIA ACT***Date of Assent: 27th September, 2007**Commencement: 1st October, 2007*

AN ACT of Parliament to provide for the establishment of the Media Council of Kenya; for the conduct and discipline of journalists and the media; for the self-regulation of the media and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Media Act, 2007.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Code of Conduct” means the code of conduct for journalists and media enterprises set out in the Second Schedule;

“Council” means the Media Council of Kenya established under section 3;

“encrypt” means to treat electronically or otherwise for the purpose of preventing intelligible reception;

“foreign journalist” means any journalist who is not a citizen of Kenya;

“journalism” means the collecting, writing, editing and presenting of news or news articles in newspapers and magazines, radio and television broadcasts, and in the internet;

“journalist” means any person who holds a diploma or a degree in mass communication from a recognized institution of higher learning and is recognized as such by the Council, or any other person who was practicing as a journalist immediately before the commencement of this Act, or who holds such other qualifications as are recognized by the Council, and earns a living from the practice of journalism, or any person who habitually engages in the practice of journalism and is recognized as such by the Council;

“media” includes both electronic and print media engaged in any production for circulation to the public, but does not include book publishing;

“media enterprise” means an organization whose business involves the collection, processing and dissemination of news or news articles, or in entertainment and education through the media;

“Minister” means the Minister for the time being responsible for information and broadcasting;

“nominating authority” means a body charged with nominating members of the Council in terms of section 6 (1);

“political party” means any registered political party as defined in the National Assembly and Presidential Elections Act, or any alliance of such registered parties, as the case may be, which for the purpose of any particular election, has, before the commencement of the relevant election period, submitted a list of candidates for the National Assembly or local government authority; Cap. 7.

“programme” means sounds or visual images or combination of sounds and visual images that are intended to inform, enlighten or entertain; and

“publication” means the dissemination to the public of any written, audio or video material, and includes materials disseminated through the internet.

PART II—THE MEDIA COUNCIL OF KENYA

3. (1) There is hereby established a Council to be known as the Media Council of Kenya. Establishment of the Council.

(2) The Council is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of moveable and immovable property;
- (c) entering into contracts;
- (d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

(3) The business and affairs of the Council shall be conducted in accordance with the First Schedule.

Functions of the Council.

4. The functions of the Council are to—

- (a) mediate or arbitrate in disputes between the government and the media, between the public and the media and intramedia;
- (b) promote and protect freedom and independence of the media;
- (c) promote high professional standards amongst journalists;
- (d) enhance professional collaboration among media practitioners;
- (e) promote ethical standards among journalists and in the media;
- (f) ensure the protection of the rights and privileges of journalists in the performance of their duties;
- (g) advise the government or the relevant regulatory authority on matters pertaining to professional, education and the training of journalists and other media practitioners;
- (h) make recommendations on the employment criteria for journalists;
- (i) uphold and maintain the ethics and discipline of journalists as set out in this Act and any other relevant law;
- (j) do all matters that appertain to the effective implementation of this Act.
- (k) compile and maintain a register of journalists, media enterprises and such other related registers as it may deem fit;
- (l) conduct an annual review of the performance and the general public opinion of the media, and publish the results thereof in at least two local newspapers.

Operations of the Council.

5. The Council shall operate without any political or other bias or interference and shall be wholly independent and separate from the government, any political party, or any nominating authority.

6. (1) The Council shall comprise thirteen members, appointed as follows in accordance with subsection (4)—

Composition of the Council.

- (a) two persons nominated by the Kenya Union of Journalists, one of whom shall be of opposite gender;
- (b) three persons nominated by the Media Owners Association at least one of whom shall be of opposite gender;
- (c) one person nominated by the Law Society of Kenya;
- (d) one person nominated by the Editor's Guild of Kenya;
- (e) two persons nominated by schools of journalism of recognized universities, one representing public universities and the other representing private universities;
- (f) one person nominated by the Kenya Correspondents Association;
- (g) one person nominated by the Public Relations Society of Kenya;
- (h) one person nominated by the Kenya Institute of Mass Communications;
- (i) one person nominated by the Kenya News Agency.

(2) A person shall not qualify to be appointed to the Council if such person is—

- (a) not a Kenyan citizen and ordinarily resident in Kenya;
- (b) at the relevant time, an office bearer or employee of a political party or any body of a political nature;
- (c) an undischarged bankrupt.

(3) Members of the Council nominated in accordance with subsection (1) shall appoint a member or members to represent the interests of a nominating body if the nominating body fails to present its nominee within a period of thirty days from the date of commencement of this Act, or from the date of notification of a vacancy.

(4) Within fourteen days from the date of commencement of this Act, each of the bodies listed in subsection (1) shall forward the names

of their nominees to the Director of Information for invitation to the first meeting of the Council.

(5) Appointment to the Council shall be by notice in the Gazette.

Requirements for
appointment.

7. (1) Without prejudice to the provisions of section 6 (2), a person shall not be eligible for appointment to the Council unless such person—

- (a) is a holder of a degree from a recognized institution of learning and possess, by virtue of his learning and experience, expertise in the areas of media policy and law, media regulation, business practice and finance, journalism, entertainment, education, advertising practice or related social issues;
- (b) is committed to constitutional freedom of expression, responsible journalism, the right of the public to be informed, transparency and accountability of public officers;

(2) A person appointed to the Council shall, before taking up office, take an oath or affirm before a judge of the High Court, that he is committed to—

- (a) fairness, freedom of expression, openness and accountability;
and
- (b) upholding and protecting the constitution and other laws of Kenya.

Tenure of office of
Council members.

8. The members of the Council shall hold office for a period of three years and shall be eligible for re-appointment subject to a maximum of two terms:

Provided that in the case of the initial members of the Council, the Council shall, at its first meeting, cast a ballot and elect—

- (a) seven members whose terms of office shall expire at the end of two years; and
- (b) six other members whose terms of office shall expire at the end of three years.

Election of
chairperson and vice-
chairperson of the
Council, etc.

9. (1) The Director of Information shall, after twenty one days but not later than thirty days from the date of commencement of this Act, convene through a public notice the first meeting of the Council at

which members of the Council shall elect from amongst themselves, a chairperson and vice-chairperson, who shall at all times be of opposite gender.

(2) The Chairperson shall preside over the meetings of the Council.

(3) If the Chairperson is absent or incapacitated, or if the office of the Chairperson is vacant, the Vice-Chairperson shall act as the Chairperson, and if both are absent or incapacitated, or if both those offices are vacant, the Council shall elect one of its own members to act as Chairperson for a period not exceeding thirty days during which a substantive replacement shall be made.

10. (1) A person shall cease to be a member of the Council if such person—

Cessation of membership of Council.

- (a) is absent from three consecutive meetings of the Council without good cause;
- (b) resigns in writing addressed to the Chairperson, giving one month's notice of intention to do so;
- (c) becomes incapacitated by prolonged mental or physical illness;
- (d) is convicted of a felony, fraud, forgery, uttering a forged document, or for any offence under the Anti-Corruption and Economic Crimes Act, 2003;
- (e) is unable or unfit to discharge the functions of a member of the Council; or
- (f) dies.

No. 3 of 2003.

(2) Every vacancy in the Council shall be notified at once to the appointing authority, and the appointing authority shall, as soon as is reasonably practical, appoint and deliver to the Council the names of the person appointed to fill the vacancy for the un-expired term of office of the departed member.

11. The members of the Council shall be paid reasonable allowances and disbursements for expenses.

Remuneration of members of the Council.

12. (1) There shall be a Secretary who shall be appointed by the Council.

Secretary.

(2) The Secretary shall hold office for such period and on such terms and conditions of employment as the Council may determine.

(3) The Secretary shall be an *ex-officio* member of the Council but shall have no right to vote at any meeting of the Council.

(4) The Secretary shall be the chief executive officer of the Council and shall, subject to the direction of the Council, be responsible for the day to day management of the Council.

Functions of the Secretary.

13. (1) The Secretary shall, in consultation with the Council, be responsible for the direction of the affairs and transactions of the Council, the exercise, discharge and performance of its objectives, functions and duties.

(2) The Secretary shall—

- (a) ensure the maintenance of efficiency and discipline by all staff of the Council;
- (b) manage the budget of the Council to ensure that its funds are properly expended and accounted for;
- (c) keep registers of journalists, media enterprises and such other registers as the Council may, from time to time, require; and
- (d) perform such other duties as the Council may, from time to time, assign.

Delegation by the Council.

14. The Council may, by resolution either generally or in any particular case, delegate to a committee or any officer, member of staff or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

Staff of the Council.

15. The Council may employ such staff as may be necessary for the proper and efficient discharge of its functions under this Act, upon such terms and conditions of service as the Council may determine.

The common seal of the Council.

16. (1) The common seal of the Council shall be kept in the custody of the Secretary or of such other person as the Council may direct, and shall not be used except upon the order of the Council.

(2) The common seal of the Council, when affixed to a document and duly-authenticated, shall be judicially and officially noticed, and

unless the contrary is proved, any necessary order or authorization by the Council under this section shall be presumed to have been given.

(3) The common seal of the Council shall be authenticated by the signature of the Chairperson of the Council and the Secretary:

Provided that the Council shall, in the absence of either the Chairperson or the Secretary, in any particular matter, nominate one member of the Council to authenticate the seal of the Council on behalf of either the Chairperson or the Secretary.

17. Liability shall not attach to the Council, or to any of its staff, or to a member of the Council for loss or damage sustained by any person as a result of any act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed or conferred by or under this Act.

Protection of Council from liability.

PART III—FINANCIAL PROVISIONS

18. The funds and assets of the Council shall consist of—

Funds of the Council. 6 of 2009, Sch.

- (a) such monies or assets as may accrue to or vest in the Council in the course of the exercise of its powers or performance of its functions under this Act;
- (b) such monies as may be payable to the Council pursuant to this Act or any other written law;
- (c) such levies and fees as may be imposed by the Council in accordance with section 19;
- (d) donations, gifts and endowments from lawful organizations or sources which shall not be from foreign governments or foreign entities;
- (e) proceeds of any investments by the Council; and
- (f) grants which shall not be from foreign governments or foreign entities;
- (i) such monies as may be appropriated by Parliament for the purposes of the Council.

19. (1) The Council may, by notice in the Gazette, impose a levy in respect of all media enterprises operating in Kenya, and an annual registration fee in respect of all journalists whose names appear in the

Levy and registration fees.

registers kept by the Council.

(2) The levy and the annual registration fee payable shall be determined by the Council from time to time and in such manner as the Council may specify in the Gazette.

(3) The levy and annual registration fee imposed in accordance with subsection (1) shall be payable at the commencement of each calendar year.

Financial year. **20.** The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

Annual estimates. **21.** (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Council for that financial year.

(2) The annual estimates shall make provisions for all estimated expenditure of the Council for the financial year concerned, and in particular shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the staff of the Council;
- (b) payment of pensions, gratuities and other charges in respect of former staff of the Council;
- (c) proper maintenance of the buildings and grounds of the Council;
- (d) maintenance, repair and replacement of the equipment and other property of the Council;
- (e) payment of allowances of the members of the Council; and
- (f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Council may deem fit.

Accounts and audit.
6 of 2009, Sch. **22.** (1) The Council shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Council.

(2) Within a period of three months after the end of each financial year, the Council shall submit to the independent firm of auditors

appointed annually by the Council the accounts of the Council, in respect of that year, together with—

- (a) a statement of income and expenditure during that financial year; and
- (b) a statement of the assets and liabilities of the Council on the last day of that financial year.
- (d) Where public funds have been given, the accounts of the Council shall be examined, audited and reported upon annually by the Controller and Auditor-General in accordance with the Public Audit Act.

(3) The audited accounts of the Council shall be published in at least two daily newspapers having countrywide circulation.

PART IV — COMPLAINTS AND DISPUTE RESOLUTION

23. There shall be established a Complaints Commission which shall consist of five persons appointed by the Council, who shall not be members of the Council, as follows—

Complaints Commission.

- (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) four other persons possessing experience and expertise in any one of the following areas, that is, journalism, media policy and law, media regulation, business practice and finance, entertainment, education, advertising or related social issues.

24. (1) The Complaints Commission may establish conciliation, mediation or arbitration panels, each consisting of not less than three members of the Complaints Commission, to deal with, hear and determine any matter on behalf of the Complaints Commission.

Establishment of panels.

(2) A panel established under subsection (1) shall exercise all the powers and shall perform all the duties and functions of the Complaints Commission in relation to any matter before the panel.

(3) Members of a panel established under subsection (1) may, if necessary, consult with the Complaints Commission for purposes of ensuring consistency of decisions of the Council.

25. Members of the Complaints Commission shall be paid reasonable allowances and disbursements for expenses.

Remuneration of members of the Complaints Commission.

Complaints.

26. (1) Any person aggrieved by—

- (a) any publication, or any conduct of a journalist media enterprise or the Council; or
- (b) anything done against a journalist or media enterprise that limits or interferes with the Constitutional freedom of expression of such journalist or media enterprise,

may make a written complaint to the Council setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

(2) Upon receipt of a complaint, the Council shall, within fourteen days from the date of receipt of the complaint, refer the complaint to the Complaints Commission for determination.

Procedure upon complaint.

27. (1) Upon receipt of a complaint, the Complaints Commission shall notify, in writing, the party against whom the complaint has been made, within fourteen days of receipt thereof, stating the nature of the complaint, the breach, act or omission in question and the date on which the matter shall be considered by the Complaints Commission and shall thereby require such party to respond to the complaint in writing.

(2) The Complaints Commission shall, having heard the matter the subject of the complaint, make a report, issue any decision as it deems appropriate and give directions in connection with the complaint, and shall publish its findings if it considers it in the public interest to do so.

(3) The Complaints Commission shall communicate its decision to the parties concerned within fourteen days from the time the decision is made.

(4) Except upon the request of a party, and approval of such request by the Council, the Complaints Commission shall conduct its hearings in public.

Powers of the Complaints Commission.

28. (1) The Complaints Commission may, by notice in writing, require any person to—

- (a) give to the Complaints Commission reasonable assistance in the investigation of a complaint made under section 26;
- (b) appear before the Complaints Commission for examination concerning matters relevant to the investigation of any complaint made under section 26.

(2) The Complaints Commission may not be bound by the rules of evidence as set out in the Evidence Act. Cap. 80.

(3) Except as expressly provided in this Act or any regulations made thereunder, the Complaints Commission shall regulate its own procedure.

29. (1) Without prejudice to the generality of section 27 (2), the Complaints Commission or any of its panels may, after hearing the parties to a complaint— Decision of Complaints Commission.

- (a) and being of the opinion that the complaint is devoid of merit or substance, dismiss such complaint;
- (b) order an offending party to publish an apology and correction in such manner as the Council may specify;
- (c) issue a public reprimand of the journalist or media enterprise involved.

(2) The Complaints Commission or any of its panels may make any or a combination of the orders set out in subsection (1).

30. The Secretary of the Council shall keep or cause to be kept a record of all proceedings of the Complaints Commission. Record of proceedings.

31. Every decision made by the Council or the Complaints Commission in a matter the subject of a dispute shall be published in the Gazette. Publication of decisions.

32. (1) Any party aggrieved by the decision of the Complaints Commission may appeal to the Council in the prescribed manner against such decision, within fourteen days from the date such decision was made. Appeals.

(2) The Council shall consider such an appeal and shall either vary, reverse or confirm the decision of the Complaints Commission, and any decision that the Council arrives at shall be communicated to the parties concerned within fourteen days from the time the decision is made.

(3) Any person aggrieved by a decision of the Council may, within twenty-one days from the date of such decision, appeal to the High Court on a point of law:

Provided that no appeal shall be admitted by the High Court unless a judge of the High Court has certified the existence of an issue of law.

Enforcement of decisions.

33. A decision of the Complaints Commission, or the Council, against which no appeal has been preferred within thirty days from the date on which the decision was made shall be adopted and enforced as an order of Court.

Rules of the Complaints Commission.

34. Subject to the provisions of this Act, the Complaints Commission may, in consultation with the Council, make rules governing its own procedure.

PART V—MISCELLANEOUS

Information by media.

35. (1) The media shall, in a free and independent manner and style, inform the public on issues of public interest and importance in a fair, accurate and unbiased manner whilst distinctly isolating opinion from fact and avoiding offensive coverage of nudity, violence and ethnic biases.

(2) The media shall keep and maintain high professional and ethical standards and shall, at all times, have due regard to the Code of Conduct set out in the Second Schedule to this Act.

(3) Subject to subsection (2), the Council shall not seek to control or direct journalists in the execution of their professional duties.

Accreditation of journalists.

36. (1) The Council shall consider and approve applications by foreign journalists for accreditation to practise in Kenya.

(2) The accreditation shall, upon payment of the prescribed fees, be valid for one year and shall be renewable.

(3) During accreditation, the Council shall take measures to ensure that suitably qualified citizens of Kenya receive priority, and have equal employment opportunities and are equitably represented in all media practice activities and levels in the workforce of all media houses.

Offences.

37. (1) A person who—

- (a) refuses or fails to comply with the requirement of the Complaints Commission which is applicable to him, to the extent to which he is able to comply with it; or
- (b) obstructs or hinders the Complaints Commission in the exercise of its powers under this Act;
- (c) furnishes information or makes a statement to the Complaints Commission which he knows to be false or misleading in

any material particular; or

- (d) when appearing before the Complaints Commission for examination, makes a statement which he knows to be false or misleading in any material particular,

commits an offence.

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or both.

(3) Where an offence under this section is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (2), be liable to a fine of one thousand shillings for each day during which the offence continues, or to imprisonment for a term not exceeding three months, or both.

38. A person who contravenes any provision of this Act or regulations made thereunder for which no penalty is specifically provided for shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months, or both. Penalty.

39. Subject to the provisions of this Act, the Council may, by notice in the Gazette, make rules— Rules.

(a) governing its own procedure;

(b) amending the Second Schedule.

FIRST SCHEDULE

(s. 3 (3))

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

1. (1) The Council shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Ordinary meetings shall be convened by the Chairperson.

(3) Notwithstanding the provisions of sub-paragraph (1), the Chairperson shall convene a special meeting of the Council at any time upon receipt of a requisition signed by not less than five members of the Council calling upon the Chairperson to do so, and such special

meeting shall be held not later than twenty-one days from the date of receipt of the requisition.

(4) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(5) The quorum for the conduct of the business of the Council shall be five members.

(6) The Chairperson or, in the absence of the Chairperson, a member selected to act as Chairperson at a particular meeting of the Council, shall preside at each meeting of the Council and the person presiding at any meeting shall have a deliberative as well as a casting vote.

(7) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to paragraph (4), no proceedings of the Council shall be invalid by reason only of a vacancy among members thereof.

(9) Subject to provisions of this Schedule, the Council may determine its own procedure and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, ask questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council for that purpose.

SECOND SCHEDULE

(s. 35 (2))

CODE OF CONDUCT FOR THE PRACTICE OF JOURNALISM

1. Accuracy and Fairness

- (a) The fundamental objective of a journalist is to write a fair, accurate and an unbiased story on matters of public interest. All sides of the story shall be reported, wherever possible. Comments should be obtained from anyone who is mentioned in an unfavourable context.
- (b) Whenever it is recognized that an inaccurate, misleading or distorted story has been published or broadcast, it should be corrected promptly. Corrections should present the correct information and should not restate the error except when clarity demands.
- (c) An apology shall be published or broadcast whenever appropriate in such manner as the Council may specify.
- (d) When stories fall short on accuracy and fairness, they should not be published. Journalists, while free to be partisan, should distinguish clearly in their reports between comment, conjecture and fact.
- (e) In general, provocative and alarming headlines should be avoided. Headings should reflect and justify the matter printed under them. Headings containing allegations made in statements should either identify the body or the source making them or at least carry quotation marks.
- (f) Journalists should present news fairly and impartially, placing primary value on significance and relevance.
- (g) Journalists should treat all subjects of news coverage with respect and dignity, showing particular compassion to victims of crime or tragedy.
- (h) Journalists should seek to understand the diversity of their community and inform the public without bias or stereotype and present a diversity of expressions, opinions, and ideas in context.
- (i) Journalists and other media practitioners should present analytical reporting based on professional perspective, not personal bias.

2. Independence

Journalists should defend the independence of all journalists from those seeking influence or control over news content. They should—

- (a) gather and report news without fear or favour, and vigorously resist undue influence from any outside forces, including advertisers, sources, story subjects, powerful individuals and special interest groups.
- (b) resist those who would buy or politically influence news content or who would seek to intimidate those who gather and disseminate news.
- (c) determine news content solely through editorial judgement and not the result of outside influence.
- (d) resist any self-interest or peer pressure that might erode journalistic duty and service to the public.
- (e) recognize that sponsorship of the news should not be used in any way to determine, restrict or manipulate content.
- (f) refuse to allow the interests of ownership or management to influence news' judgement and content inappropriately.

3. Integrity

Journalists should present news with integrity and decency, avoiding real or perceived conflicts of interest, and respect the dignity and intelligence of the audience as well as the subjects of news. They should—

- (a) identify sources whenever possible. Confidential sources should be used only when it is clearly in public interest to gather or convey important information or when a person providing information might be harmed;
- (b) clearly label opinion and commentary;
- (c) use technological tools with skill and thoughtfulness, avoiding techniques that skew facts, distort reality, or sensationalize events;
- (d) use surreptitious news gathering techniques including hidden cameras or microphones, only if there is no other way of

obtaining stories of significant public importance, and if the technique is explained to the audience.

Journalists should not—

- (a) pay news sources who have vested interest in a story;
- (b) accept gifts, favours or compensation from those who might seek to influence coverage;
- (c) engage in activities that may compromise their integrity or independence.

4. Accountability

Journalists and all media practitioners should recognize that they are accountable for their actions to the public, the profession and themselves. They should—

- (a) actively encourage adherence to these standards by all journalists and media practitioners;
- (b) respond to public concerns, investigate complaints and correct errors promptly;
- (c) recognize that they are duty-bound to conduct themselves ethically.

5. Opportunity to Reply

A fair opportunity to reply to inaccuracies should be given to individuals or organizations when reasonably called for. If the request to correct inaccuracies in a story is in the form of a letter, the editor has the discretion to publish it in full or in its abridged and edited version, particularly when it is too long, but the remainder should be an effective reply to the allegations.

6. Unnamed Sources

Unnamed sources should not be used unless the pursuit of the truth will best be served by not naming the source who should be known by the editor and reporter. When material is used in a report from sources other than the reporter's these sources should be indicated in the story.

7. Confidentiality

In general, journalists have a professional obligation to protect confidential sources of information.

8. Misrepresentation

Journalists should generally identify themselves and not obtain or seek to obtain information or pictures through misrepresentation or subterfuge. Subterfuge can be justified only in the public interest and only when material cannot be obtained by an other means.

9. Obscenity, Taste and Tone in Reporting

- (a) In general, journalists should avoid publishing obscene, vulgar or offensive material unless such material contains a news value which is necessary in the public interest.
- (b) In the same vein, publication of photographs showing mutilated bodies, bloody incidents and abhorrent scenes should be avoided unless the publication or broadcast of such photographs will serve the public interest.

10. Paying for News and Articles

When money is paid for information, serious questions can be raised about the credibility of that information and the motives of the buyer and the seller. Therefore, in principle, journalists should not receive any money as an incentive to publish any information.

11. Covering Ethnic, Religious and Sectarian Conflict

- (a) News, views or comments on ethnic, religious or sectarian dispute should be published or broadcast after proper verification of facts and presented with due caution and restraint in a manner which is conducive to the creation of an atmosphere congenial to national harmony, amity and peace.
- (b) Provocative and alarming headlines should be avoided.
- (c) News reports or commentaries should not be written or broadcast in a manner likely to inflame the passions, aggravate the tension or accentuate the strained relations between the communities concerned. Equally so, articles or broadcasts with the potential to exacerbate communal trouble should be avoided.

12. Recording Interviews and Telephone Conversations

- (a) Except in justifiable cases, journalists should not tape or record anyone without the person's knowledge. An

exception may be made only if the recording is necessary to protect the journalist in a legal action or for some other compelling reason. In this context these standards also apply to electronic media.

- (b) Before recording a telephone conversation for broadcast, or broadcasting a telephone conversation live, a station should inform any party to the call of its intention to broadcast the conversation. This, however, does not apply to conversation whose broadcast can reasonably be presumed, for example, telephone calls to programmes where the station customarily broadcasts calls.

13. Privacy

- (a) The public's right to know should be weighed against the privacy rights of people in the news.
- (b) Journalists should stick to the issues.
- (c) Intrusion and inquiries into an individual's private life without the person's consent are not generally acceptable unless public interest is involved. Public interest should itself be legitimate and not merely prurient or morbid curiosity. Things concerning a person's home, family, religion, tribe, health, sexuality, personal life and private affairs are covered by the concept of privacy except where these impinge upon the public.

14. Intrusion into Grief and Shock

- (a) In cases involving personal grief or shock, inquiries should be made with sensitivity and discretion.
- (b) In hospitals, journalists should identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.

15. Sex Discrimination

Women and men should be treated equally as news subjects and news sources.

16. Financial Journalism

- (a) Journalists should not use financial information they receive in advance for their own benefit, and should not pass the information to others.

- (b) Journalists should not write or broadcast about shares, securities and other market instruments in whose performance they know they or their close families have a significant financial interest, without disclosing the interest to the editor.
- (c) Journalists should not buy or sell, directly or through nominees or agents, shares or securities and other market instruments about which they intend to write in the near future.

17. Letters to the Editor

An editor who decides to open a column on a controversial subject is not obliged to publish all the letters received in regard to that subject. The editor may select and publish only some of them either in their entirety or the gist thereof. However, in exercising this right, the editor should make an honest attempt to ensure that what is published is not one-sided but presents a fair balance between the pros and the cons of the principal issue. The editor shall have the discretion to decide at which point to end the debate in the event of a rejoinder upon rejoinder by two or more parties on a controversial subject.

18. Protection of Children

Children should not be identified in cases concerning sexual offences, whether as victims, witnesses or defendants. Except in matters of public interest, for example, cases of child abuse or abandonment, journalists should not normally interview or photograph children on subjects involving their personal welfare in the absence, or without the consent, of a parent or other adult who is responsible for the children. Children should not be approached or photographed while at school and other formal institutions without the permission of school authorities.

In adhering to this principle, a journalist should always take into account specific cases of children in difficult circumstances.

19. Victims of Sexual Offences

The media should not identify victims of sexual assault or publish material likely to contribute to such identification. Such publications do not serve any legitimate journalistic or public need and may bring social opprobrium to the victims and social embarrassment to their relations, family, friends, community, religious order and to the institutions to which they belong.

20. Use of Pictures and Names

As a general rule, the media should apply caution in the use of pictures and names and should avoid publication when there is a possibility of harming the persons concerned. Manipulation of pictures in a manner that distorts reality should be avoided. Pictures of grief, disaster and those that embarrass and promote sexism should be discouraged.

21. Innocent Relatives and Friends

The media should generally avoid identifying relatives or friends of persons convicted or accused of crime unless the reference to them is necessary for the full, fair and accurate reporting of the crime or legal proceedings.

22. Acts of Violence

The media should avoid presenting acts of violence, armed robberies, banditry and terrorist activities in a manner that glorifies such anti-social conduct. Also, newspapers should not allow their columns to be used for writings which tend to encourage or glorify social evils, warlike activities, ethnic, racial or religious hostilities.

23. Editor's Responsibilities

The editor shall assume the responsibility for all content, including advertisements, published in a newspaper. If responsibility is disclaimed, this shall be explicitly stated before hand.

24. Advertisements

The editor should not allow any advertisement which is contrary to any aspect of this Code of Conduct. In this regard, and to the extent applicable, the editor should be guided by the Advertiser's Code of Conduct.

25. Hate Speech

Quoting persons making derogatory remarks based on ethnicity, race, creed, colour and sex shall be avoided. Racist or negative ethnic terms should be avoided. Careful account should be taken of the possible effect upon the ethnic or racial group concerned, and on the population as a whole, and of the changes in public attitudes as to what is and what is not acceptable when using such terms.

[Subsidiary]

SUBSIDIARY LEGISLATION

L.N. 78/2009.

THE MEDIA (COMPLAINTS COMMISSION) RULES, 2009

PART I—PRELIMINARY

Citation.

1. These Rules may be cited as the Media (Complaints Commission) Rules, 2009.

Interpretation.

2. In these Rules, unless the context otherwise requires—

“hearing” means a sitting of a hearing panel or the Commission for the purpose of enabling it to reach a decision in respect of a complaint;

“hearing panel” means a panel of the Commission established under section 24 of the Act, whether a conciliation, mediation or arbitration panel;

“Commission” means the Complaints Commission established under section 23 of the Act;

“commissioner” means a member of the Commission appointed under section 23 of the Act;

“complainant” means a person who makes a complaint pursuant to section 26 of the Act;

“complaint” means a written communication made or addressed to the Council, relating to the matter set out in section 26 of the Act;

“respondent” means the party against whom a complaint is made, whether a natural or juristic person; and

“Secretariat” means the offices of the Council headed by the Secretary of the Council.

PART II—PROVISIONS ON COMPLAINTS

Lodging of complaints.

3. (1) A complaint may be lodged at the Secretariat in Nairobi or at any other branch as the Council may determine.

(2) A complaint may be lodged by a complainant in person or by a person acting on behalf of the complainant or by such other person lawfully authorized to act for the complainant.

(3) A complaint may be lodged through hand delivery or through post.

(4) For delivery through post, the time prescribed in these Rules shall start running from the date of receipt at the Secretariat.

Mode of lodging complaint.

4. (1) A complaint shall be lodged in Form 1 set out in the Schedule, and shall be supported by the necessary supporting documents and such other

information and particulars as the Commission may prescribe.

(2) The Secretariat may assist a complainant to reduce a complaint to Form 1 before the complaint is forwarded to the Commission, and any Form 1 completed by the Secretariat under this subparagraph shall be authenticated by the complainant through a declaration.

5. (1) All complaints received by the Council shall be registered and shall be forwarded to the Commission within fourteen days of receipt, in accordance with section 26 (2) of the Act. Processing of complaints.

(2) Upon entry of the complaint into the register, the Secretariat shall notify the complainant of the receipt and registration of the complaint.

(3) The respondent shall, within fourteen days from the date of receipt of notification under section 27 (1) of the Act, respond in writing to the issues raised in the complaint.

(4) The response shall be lodged at the Secretariat through personal delivery or by registered post.

(5) The Secretariat shall, within seven days of receipt of the response from the respondent, send the name to the complainant.

(6) For purposes of section 27 (1) of the Act, notification against a party against whom a complaint is made shall be in Form 2 set out in the Schedule.

6. (1) Proceedings before the Commission shall be conducted in English or Kiswahili. Language.

(2) The Commission shall, taking into account all the circumstances, grant the assistance of a competent interpreter free of charge to a party or witness who does not understand or speak the language used at the hearing.

(3) The decisions of the Commission shall be prepared in the English language but may be translated, on request by a party, into the Kiswahili language.

7. The jurisdiction of the Commission shall be limited to the matters set out in section 26 (1) of the Act. Jurisdiction.

8. (1) No fee shall be charged on the lodging or determination of a complaint under the Act and these Rules. Fees.

(2) Notwithstanding the provisions of paragraph (1) above, a nominal fee may be prescribed where copies of the proceedings or documents of the Commission have been applied for by any party. Rejection of complaints.

(3) The Commission may waive any fee chargeable under this rule upon satisfactory demonstration that the applicant is unable to pay.

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Withdrawal of
complaint and lapse
of time.

9. (1) A complainant may, in writing, withdraw a complaint at any stage of the proceedings and before any finding or recommendation is made.

(2) Where a complainant fails or neglects to respond to communication from the Commission within twelve months from the date of such communication, the Commission may deem the complaint to have lapsed.

Register of
complaints.

10. (1) The Secretariat shall keep a register of complaints in which all complaints shall be entered.

(2) A complaint shall be numbered and recorded sequentially in the register of complaints in the order it was received.

(3) Subject to these Rules, the Commission may publish or otherwise disclose to any person any information held on the register if it is of the opinion that the publication or disclosure is necessary for purposes of—

- (a) raising public awareness of the complaints system; or
- (b) improving the complaints system.

Rejection of
complaints.

11. (1) The Commission shall assess all complaints before they are admitted to a hearing.

(2) Upon assessment of a complaint under this rule, the Commission shall determine whether the complaint—

- (a) is within the mandate of the Commission;
- (b) is justifiable; or
- (c) otherwise merits admission.

(3) Where, in the opinion of the Commission, a complaint—

- (a) does not fall within the mandate of the Commission;
- (b) is unjustifiable; or
- (c) otherwise does not merit admission,

such complaint shall thereupon be rejected.

(4) In addition to paragraph 3 above, the Commission shall reject a complaint where it considers that—

- (a) the complaint is—
 - (i) the subject of court proceedings;
 - (ii) external to the mandate of the Commission;

(iii) vexatious, frivolous, or otherwise an abuse of the procedures for dealing with complaints;

(iv) repetitious;

(b) no provision of the Act or rules made thereunder has been breached;

(c) more than nine months have elapsed since the matter the subject of the complaint occurred or was reported, and no sufficient cause has been shown for the delay in making the complaint:

(d) it is not possible to ascertain the parties in the dispute.

(5) The Commission shall record its reasons for rejecting a complaint under this rule and shall, in writing, notify the complainant accordingly within fourteen days of the rejection, giving reason thereof.

(6) For purposes of paragraph (4) (a) (iv) above, a complaint shall be deemed to be repetitious if—

(a) it is substantially the same as a previous complaint, whether made by or on behalf of the same or a different complainant, or it concerns the same subject as previous complaint: and

(b) no fresh evidence, being evidence which was not reasonably available at the time a previous complaint was made, is tendered to support it; or

(c) the complainant has already been dealt with by the Commission.

12. (1) Without prejudice to section 32 of the Act, a person who is aggrieved by the decision of the Commission to reject a complaint may apply for review of that decision within twenty eight days of notification of the rejection. Application for review.

(2) An application for review shall only be made upon the discovery of new and important matter or evidence which was not within the knowledge of the applicant when the decision was made by the Commission, or for any other sufficient reason.

(3) An application for review under this rule shall be in writing and shall specify—

(a) details of the complaint;

(b) the date on which the complaint was made;

(c) the ground on which the application is based; and

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(d) the date on which the complainant was notified of the rejection of the complaint.

(4) The Commission shall consider the application for review and may allow or reject it, and shall notify the applicant of its decision in writing, giving reasons thereof.

(5) The Commission may, for purposes of determining an application for review under this rule, request for information from any person as it considers necessary.

(6) Where an application for review is rejected, the complaint shall lapse and the applicant shall be notified accordingly.

Service of documents.

13. (1) Any document required to be served under these Rules shall be served personally on the person concerned.

(2) A party shall prove to the Commission that a document was served in terms of these Rules, by providing the Commission with—

(a) a copy of proof of mailing the document by registered post to the other party;

(b) a copy of the telegram or telex communicating the document to the other party;

(c) a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document; or

(d) if a document was served by hand—

(i) a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or

(ii) a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.

(3) If proof of service in accordance with paragraph (2) is provided, it shall be presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.

(4) Every document issued under these Rules and requiring service shall be served under the authority of the Commission by an authorized person.

(5) Any document required to be served on an incorporated body shall be deemed to be so served upon an authorized officer of the incorporated body.

(6) When a person on whom any document is required to be served cannot be found, service may be made, upon application to the Commission

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and obtaining an order thereto, by—

- (a) publishing in a newspaper circulating in the person's area, the particulars of the document;
- (b) leaving the duplicate of the document with any adult member residing with the person;
- (c) affixing the duplicate of the document to some conspicuous place in the premises in which the person ordinarily resides; or
- (d) prepaid postage.

(7) No objection may be made to the service of a document on the grounds that the person who served the document exceeded or failed to comply with his authority in any way.

(8) The Commission may accept proof of service in a manner other than prescribed in this rule, as sufficient service.

(9) Any document or notice sent by registered post by a party or the Commission shall be presumed, until the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

14. (1) The Commission shall set a date on which the complaint shall be considered and shall notify both the complainant and the respondent. Determination of complaint.

(2) The Commission may establish a hearing panel to review the complaint.

(3) If the matter is resolved by a hearing panel, the complainant and the respondent shall bind themselves in an agreement in Form 3 set out in the Schedule.

(4) If the complaint is not resolved through conciliation or a mediation process, the Commission shall set a hearing date for an arbitration of the matter.

(5) Subject to rule 15, the Commission's arbitral decision shall be final.

15. (1) A party aggrieved by an arbitral award or ruling may apply to the Commission for the variation or rescission of the award or ruling. Variation or rescission of award of ruling.

(2) An application under paragraph (1) shall be made within fourteen days of the date on which the applicant became aware of—

- (a) the award or ruling;
- (b) a mistake common to the parties to the proceedings.

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(3) A ruling made by a hearing panel which has the effect of a final order, shall be regarded as a ruling for the purposes of this rule.

Referral to hearing panel.

16. (1) The Commission or party to a dispute may refer a matter to a hearing panel, and if the referral is made by a party, that party shall—

- (a) sign the referral document;
- (b) attach to the referral document, written proof that the referral document has been served on the other party to the dispute;
- (c) if the referral document is filed out of time, attach an application for condonation in accordance with rule 25.

(2) The Commission shall not accept a referral document unless the provisions of paragraph (1) (b) and (c) have been complied with.

(3) The Commission shall give the parties at least fourteen days' notice in writing of a hearing, unless the parties agree to a shorter period of notice.

Attendance by parties to a dispute.

17. (1) The parties to a dispute shall attend conciliation or a mediation process in person, irrespective of whether they are represented.

(2) If a party is represented and fails to attend in person, the hearing panel may—

- (a) continue with the proceedings;
- (b) adjourn the proceedings; or
- (c) dismiss the matter.

(3) In exercising discretion under paragraph (2), a hearing panel shall take into account—

- (a) whether the party has previously failed to attend proceedings in respect of that dispute;
- (b) any reason given for that party's failure to attend;
- (c) whether conciliation or mediation can take place effectively in the absence of that party;
- (d) the likely prejudice to other party of the panels ruling.

Determination of jurisdiction.

18. If it appears during conciliation or mediation proceedings that a jurisdictional issue has not been determined, the hearing panel shall require the referring party to prove that the Commission has the jurisdiction to entertain the dispute before the matter may proceed further.

Disclosure of proceedings.

19. (1) Conciliation or mediation proceedings may not be disclosed.

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(2) Conciliation or mediation proceedings shall be private and confidential and shall be conducted on a without prejudice basis, and no person may refer to anything said at the proceedings during any subsequent proceedings, unless the parties agree in writing.

(3) No person, including a Commissioner, may be called as a witness during any subsequent proceedings in the Commission or in any court to give evidence about what transpired during the previous conciliation or mediation meetings.

20. (1) The Commission shall not notify both parties of the hearing date. Hearing.

(2) On the hearing date, the complainant and his witnesses shall be heard first followed by the respondent and his witnesses.

(3) The parties may call witnesses in support of their case.

(4) The Commission may summon, using Form 4 set out in the Schedule, any person to—

(a) give to the Commission assistance in the investigation and determination of a complaint; and

(b) appear before the Commission for examination on matters relevant to the investigation of any complaint.

(5) A unanimous or majority decision of the hearing panel shall be adopted by the Commission.

21. (1) The Commission shall notify the parties of their right of appeal under section 32 of the Act. Decisions of the Commission.

(2) In addition to such orders as it may make in accordance with section 29 of the Act, the Commission may—

(a) recommend to the Council suspension or removal from the register of the journalist involved;

(b) order return, repair, or replacement of any equipment;

(c) make any directive and declaration on freedom of expression;

(d) give any other order or directive as it deems necessary.

22. (1) Upon satisfactory determination of a conciliation or mediation meeting, the chairperson of the hearing panel shall cause to be signed by both parties a certificate signifying acceptance of the decision which shall be adopted as decision of the panel marking a determination of the matter. Adoption of decision.

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(2) The certificate provided for under paragraph (1) shall be in Form 5 set out in the Schedule.

Failure to comply with requirements of the Commission.

23. (1) Any person who—

- (a) refuses or fails to comply with the requirement of the Commission which is applicable to him, to the extent to which he is able to comply with; or
- (b) objects or hinders the Commission in the exercise of its powers under the Act; or
- (c) furnishes information or makes a statement to the Commission which he knows to be false or misleading in any material particular,

commits an offence.

Failure to obey summons.

24. (1) If, without reasonable cause, a witness fails to appear before the Commission in obedience to summons issued by the Commission, the Commission, on proof of proper service of the summons, may issue a warrant to bring that person before the Commission at the time and place specified therein.

(2) A warrant provided for under paragraph (1) shall be in Form 6 set out in the Schedule.

Extension of time.

25. (1) The Commission may extend the time specified for the performance of any act.

(2) A party may apply for extension of time in the prescribed manner, and an application made under this paragraph shall include the following details—

- (a) the extent of delay;
- (b) the reasons for the delay;
- (c) the referring parties, prospects of succeeding with the referral and obtaining the relief sought against the other party;
- (d) any prejudice to the other party; and
- (e) any other relevant factors.

Procedure for application.

26. (1) An application for—

- (a) extension of time;
- (b) joinder or substitution of a party;

(c) variation or rescission of an order; or

(d) preliminary or interlocutory order,

shall be served on all persons who have an interest in the application.

(2) The party bringing an application shall sign the notice of application and shall state—

(a) the title of the matter;

(b) the complaint number assigned to the matter by the Commission;

(c) the relief sought;

(d) the address at which the party delivering the document will accept delivery of all documents and proceedings;

(e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within fourteen days after the application has been delivered to it;

(f) that the application may be heard in the absence of a party that does not comply with subparagraph (e);

(g) that a schedule is included listing the documents that are material and relevant to the application.

(3) An application under this rule shall be supported by an affidavit which shall clearly and concisely set out—

(a) the names, description and addresses of the parties;

(b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;

(c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;

(d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 25; and

(e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these Rules.

(4) Any party opposing an application may deliver a notice of opposition and a replying affidavit within fourteen days from the day on which the application was served on that party, and such notice of opposition and replying

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affidavit shall contain the information required by paragraphs (2) and (3), respectively.

(5) The party initiating the proceedings may deliver a further affidavit within seven days from the day on which any notice of opposition and replying affidavit are served on it, and the further affidavit shall only address issues raised in the replying affidavit and may not introduce new issues of fact or law.

(6) The Commission may allow the affidavits referred to in this rule to be substituted by a written statement.

(7) In an urgent application, the Commission may—

- (a) dispense with the requirements of this rule; and
- (b) only grant an order against a party that has had reasonable notice of the application.

(8) The Commission shall—

- (a) allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first;
- (b) notify the parties of the date, time and place of the hearing of the application.

(9) Despite this rule, the Commission or any of its panels may determine an application in any manner it deems fit.

PART III—MISCELLANEOUS PROVISIONS

Immunity of
commissioners.

27. (1) A commissioner—

- (a) shall be free from any criminal and civil liability for anything done or said in his capacity as a commissioner;
- (b) shall not be subject to court summons to give evidence on any proceedings before the Commission or any of its panels.

Forms.

28. Except as provided in these Rules, the forms used under these Rules shall be such forms as the Commission may, from time to time, design or approve with such modification as may be necessary.

Application.

29. (1) These Rules shall apply as far as practicable to all complaints made to the Commission.

(2) Non-compliance with any of these Rules shall not render void any action taken unless the Commission otherwise directs.

Consolidation of
disputes.

30. The Commission or any of its panels may, of its own accord or on application, consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

31. (1) Any party to a dispute may request the Commission or any of its panels to make an order as to the disclosure of relevant documents. Disclosure of documents.

(2) The parties may agree on the disclosure of documents.

SCHEDULE

FORM 1

(r. 4 (1))

REPUBLIC OF KENYA

THE MEDIA ACT 2007

COMPLAINT NO OF

COMPLAINTS COMMISSION

COMPLAINT FORM

1. Complainant Identity

Name of the Complainant (Person, Firm or Institution):

Address:

Telephone Number:

Fax Number (If applicable):

Email:

2. Respondent Details

Name of Respondent (Person, firm or Institution):

Address:

Telephone Number:

Fax Number (If applicable):

Email address:

3. Nature of the Complaint

Briefly state the nature of your complaint

.....
.....

(Attach any document or statement that may be of help in your case)

Please Turn Over.

4. Date of publication, broadcast or other damage:

5. (If a story) I am complaining about the story because it is:

(a) Misleading

(b) Incomplete

(c) Inaccurate

(d) Inflammatory

(e) Biased

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- (f) Racist
- (g) Promotes ethnic animosity
- (h) Sexist
- (i) other (specify)
-

6. (If other damage) Please state

(a) Apology	(e) A follow up story
(b) Correction	(f) Publish a commentary write
(c) Clarification	(g) Replace/repair/return equipment
(d) Letter to the editor	

I hereby certify that the particulars given above are correct and true to the best of my knowledge.

Name

Signature

Date

FORM 2

(r. 5 (6))

REPUBLIC OF KENYA
 MEDIA ACT, 2007
 COMPLAINT NO OF
 COMPLAINTS COMMISSION

NOTIFICATION

To

of

The Media Council of Kenya Complaints Commission would like to notify you that a complaint has been lodged against you by of on day of 20

The Complaint touches on (*State Complaint*)

.....

.....

You are required to respond to this complaint within 14 days

ISSUED under my hand this day of 20

[Subsidiary]

Your attention is particularly drawn to section 38 of the MEDIA ACT 2007 that makes it an offence for anyone to refuse to comply with the requirements of the Commission.

Section 38 of the Media Act 2007 reads: “A person who contravenes any provision of this Act or regulations made thereunder for which no penalty is specifically provided for shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months or both.”

In the name of the Complaints Commission.

FORM 3

(r. 14 (3))

REPUBLIC OF KENYA
THE MEDIA ACT 2007
COMPLAINT NO OF
COMPLAINTS COMMISSION

CONCILIATION/MEDIATION AGREEMENT

(This Agreement is part of the Rules and Regulations of the Media Council of Kenya Complaints Commissions)

The Undersigned:
.....
(Conciliator/Mediator)

And the Parties:
..... (Complainant)
and
..... (Respondent)

wish to resolve outstanding issues concerning (“the Dispute as filed in Form 1 of the Complaints Procedures”)

1. The Parties will attempt to settle the Dispute by Conciliation/ Mediation.

2. The Conciliator/Mediator will be the Complaints Commission of the Media Council of Kenya. In selecting the Conciliator/Mediator the Parties are satisfied that the Conciliator/Mediator has no conflict of interest arising, and in the event that there is such a conflict or potential conflict, it is hereby waived by the Parties.

The Parties confirm that they will have full authority to settle at the matter.

3. The Conciliation/Mediation will take place on Day of 20 If the Parties fail to settle at the first meeting, further post-mediation meetings or communications may be arranged to facilitate a settlement.

[Subsidiary]

4. The lead negotiator(s) who shall have full authority to settle and sign on behalf of each of the Parties at the Conciliation/Mediation will be:

Party A: of

Party B: of

The following will also be present on behalf of each of the Parties:

Party A: of

Party B: of

5. Each Party to the Conciliation I Mediation and all persons attending will be bound by the provisions of this Agreement and will abide by all the provisions as appears in the Rules and Regulations.

ROLES AND RESPONSIBILITIES OF THE PARTIES

1. Role and Responsibilities of the Conciliator/Mediator

- (a) The Complaints Commission agrees to serve as Conciliator/Mediator in connection with this matter.
- (b) The Complaints Commission is an impartial third party who does not represent either of the Parties. The Commission's role is to help the Parties to negotiate a voluntary settlement of the issues in dispute between them.
- (c) The Complaints Commission does not offer legal advice and has no duty to assert or protect the personal legal rights of any Party, to raise any issue not raised by the Parties themselves or to determine who should participate in the proceedings created by this Agreement. The Commission has no duty to ensure the enforceability or validity of any settlement agreement reached.

2. Roles and Responsibilities of the Parties

- (a) The Parties voluntarily enter into the proceedings in an attempt to resolve a dispute between them. The signing of this Agreement is evidence that the Parties intend to conduct this proceedings in an honest and forthright manner and to make a serious attempt to resolve the dispute.
- (b) The Parties acknowledge that the primary responsibility for resolving the outstanding issues between them rests with them and not with the Commission.
- (c) The Parties agree to disclose all information pertinent to issues contained within the proceedings, including any necessary financial information.

3. Indemnity

The Parties agree that the Commission is not liable for any act or omission in connection with the proceedings and agree to indemnify and hold the Commission faultless from any claims for damages that may arise in any way from the Conciliation/Mediation.

4. Confidentiality

- (a) If the Complaints Commission believes that information disclosed in a private discussion with one Party is significant to the process, the proceedings may disclose the information to the other Party unless the Party making the disclosure clearly and specifically states that the disclosure is confidential.
- (b) Other than to the Parties, the Complaints Commission will not voluntarily disclose anything that is said or takes place in the proceedings, with the following exceptions:
 - (i) The Complaints Commission may discuss the proceedings and information disclosed therein with a representative of a Party, except that which is divulged confidentially by one party in a private meeting with the Complaints Commission.
 - (ii) The Complaints Commission may disclose non-identifying information for research, educational or reporting purposes;
 - (iii) The Complaints Commission may disclose information: with the written consent of both Parties; where ordered to do so by an appropriate judicial authority; where required to do so by law; or where the information disclosed suggests an actual or potential threat to human life or safety.
- (c) The Parties understand that proceedings constitute settlement discussions and that statements made during the course of the proceedings are generally inadmissible in any legal proceeding relating to the matters being mediated.
- (d) The Parties agree not to introduce into evidence in any legal proceeding statements made by a Party or the Conciliator/Mediator in the process. However, evidence that is otherwise discoverable or admissible does not become inadmissible or non-discoverable merely because of its use in the Mediation.
- (e) The Parties agree that neither of them may compel the disclosure of any documents received or prepared by the Conciliator/Mediator.
- (f) Neither of the Parties may compel the Conciliator/Mediator to testify in any legal proceeding regarding information disclosed during the proceedings or communicated to the Conciliator/Mediator in confidence.

[Subsidiary]

5. Costs of Mediation.

6. Status of Matters during the Conciliation/Mediation.

(a) Prior to the conclusion of the proceedings, neither Party may initiate any legal action or pursue any prior action against the other party.

(b) By signing this Agreement, each of the Parties and the Complaints Commission acknowledge that he or she has read this Agreement and agree to proceed with the proceedings on the terms contained herein and in the Rules and Regulations.

IN WITNESS WHEREOF, the Parties and the Complaints Commission have executed this Agreement as of the day of 20

Signed

On behalf of Party A

Signature

On behalf of Party B Signature

The Complaints Commission Signature

FORM 4

(r. 20 (4))

REPUBLIC OF KENYA
THE MEDIA ACT, 2007
COMPLAINT NO OF
COMPLAINTS COMMISSION

SUMMONS

To

of

Whereas this Commission is investigating the above complaint; you are therefore required to attend before the Media Council of Kenya Complaints Commission in regard to the complaint below on day of 20 at o' clock, and so from time to time as the commission may request until the matter is disposed of, to give evidence on behalf of and also bring with you and to produce at the time and place aforesaid

(Specify documents to be produced)

Complaints Details

Name of the Complainant (Person, Firm or Institution)

Name of Respondent (Person, firm or Institution)

Nature of the Complaint

[Subsidiary]

ISSUED under my hand this day of 20

Your attention is particularly drawn to section 38 of the MEDIA ACT 2007 that makes it an offence for anyone to refuse to comply with the requirements of the Commission.

Section 38 of the Media Act 2007 reads: "A person who contravenes any provision of this Act or regulations made thereunder for which no penalty is specifically provided for shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months or both."

In the name of the Complaints Commission

FORM 5

(r. 22 (2))

REPUBLIC OF KENYA

THE MEDIA ACT 2007

COMPLAINT NO OF

COMPLAINTS COMMISSION

Complainant:

Respondent:

CERTIFICATE OF ACCEPTANCE OF SETTLEMENT

The undersigned parties, on this day of, 20, have agreed to the following settlement or their dispute concerning and hereby Acknowledge acceptance of the settlement according to the following terms:

The Settlement Agreement is binding on the parties and is admissible in court for enforcement purposes.

In order to facilitate the above-specified terms of settlement, the parties further agree that on or before the day of, 20 they will execute a Complete Release and a Stipulation of Dismissal. Defendant will then transfer settlement proceeds to Plaintiff(s) and his/her attorney.

Signed

On behalf of Party A

Signature

On behalf of Part B Signature

The Complaints Commission Signature

[Subsidiary]

FORM 6

(r. 24 (2))

REPUBLIC OF KENYA

THE MEDIA ACT, 2007

COMPLAINT NO OF

COMPLAINTS COMMISSION

WARRANT

To
.....

Whereas was summoned to appear before the Commission on the day of 20 and the said person, without sufficient cause failed to appear in obedience to the said summons, you are hereby directed to arrest the said person and to cause his appearance before the Commission on the day of 20

Complaint Details

Name of the Complainant (Person, Firm or Institution):

.....

Name of Respondent (Person, firm or Institution):

.....

Nature of the Complaint

.....

.....

ISSUED under my hand this day of 20

Your attention is particularly drawn to section 38 of the MEDIA ACT 2007 that makes it an offence for anyone to refuse to comply with the requirements of the Commission.

Section 38 of the Media Act 2007 reads: "A person who contravenes any provision of this Act or regulations made thereunder for which no penalty is specifically provided for shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months or both."

In the name of the Complaints Commission

