



**Nation Media Group Limited & another v Media Council of Kenya Complaints  
Commission & another (Judicial Review Application E061 of 2025)  
[2025] KEHC 6996 (KLR) (Judicial Review) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6996 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW**

**JUDICIAL REVIEW APPLICATION E061 OF 2025**

**RE ABURILI, J**

**MAY 27, 2025**

**IN THE MATTER OF AN APPLICATION TO QUASH THE DECISION  
AND ORDER MADE BY THE MEDIA COMPLAINTS COMMISSION IN  
THE MEDIA COMPLAINTS COMMISSION COPLAINT NO. 12 OF 2024**

**BETWEEN**

**NATION MEDIA GROUP LIMITED ..... 1<sup>ST</sup> APPLICANT**

**EDITOR, DAILY NATION ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MEDIA COUNCIL OF KENYA COMPLAINTS COMMISSION .... 1<sup>ST</sup>  
RESPONDENT**

**SYOKIMAU RESIDENTS' ASSOCIATION ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The sole issue for determination in this matter instituted by way of Originating Motion under the 2024 Fair Administrative Action Rules is whether the 1<sup>st</sup> respondents Media Council of Kenya Complaints Commission had jurisdiction to admit the complaint dated 25<sup>th</sup> October, 2024, lodged by the 2<sup>nd</sup> respondent herein Syokimau Residents Association against the applicant Nation Media Group Limited.
2. The 2<sup>nd</sup> respondent in their complaint, alleged that the applicant herein published false and misleading information in a caption of Caveat Emptor Notice on behalf of Syokimau Farm Limited, a company which, according to the 2<sup>nd</sup> respondent, does not exist as it was voluntarily wound up as per the annexed gazette Notice dated 8/8/2013 vide Gazette Notice No. 11485.



3. Additionally, that the title to land subject of the said caveat emptor notice, being LR NO. 12XX5 was non-existent as it had been subdivided into several plots, sold and titles documents issued to the present several persons.
4. Prior to the filing of the said complaint with the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent had instructed its advocates to write to the applicant, pointing out what it considered to be misleading information in the caveat emptor notice above reference. The demand notice was issued on 16<sup>th</sup> September, 2024, demanding for retraction of the alleged false information and a publication of such retraction
5. The 2<sup>nd</sup> respondent demanded for documentation regarding the purported non existent entity which notice also referred to a chairman whose name was not disclosed. The 2<sup>nd</sup> respondent further stated that there were cases of persons purporting to be directors of Syokimau Farm Limited and defrauding members of the public and that there were cases determined by the courts to the effect that the said company was wound up in 2013. the 2<sup>nd</sup> respondents stated that therefore the paid up advertisement was by fraudsters and persons acting in their behest to perpetuate thrir criminal enterprises, by among others, using the applicant herein to abet criminal activities
6. The applicant did not respond to the demand notice, upon which the 2<sup>nd</sup> respondent lodged the complaint with the 1<sup>st</sup> respondent. Upon the applicant being notified of the filing of the complaint against it, it filed a preliminary objection raising an objection to jurisdiction of the 1<sup>st</sup> respondent to entertain the complaint. The applicant contended that the matter related to a purely contractual relationship between it and the author of the caveat emptor Notice hence the Complaints Commission had no jurisdiction to hear and determine the complaint.
7. The respondents opposed the preliminary objection maintaining that the Complaints commission had jurisdiction to entertain or admit the compliant to hearing and in its impugned ruling dated 18<sup>th</sup> November, 2024, on the preliminary objection, the 1<sup>st</sup> respondent found and held that it was seized of jurisdiction to admit the compliant to a merit hearing. It is that ruling which is subject of these proceedings, with the applicant seeking to quash the decision of the 1<sup>st</sup> respondent to admit the complaint to a merit hearing.
8. The respondents maintain that the 1<sup>st</sup> respondent had jurisdiction while the applicant contends otherwise and submissions were filed to canvass the Originating Motion. As posed hereinabove, the question is whether the 1<sup>st</sup> respondent had jurisdiction to hear and determine the complaint lodged by the 2<sup>nd</sup> respondent.

### **Analysis and Determination.**

9. Since the decision which is impugned was not a merit decision, I will not attempt to determine the merits or otherwise of or propriety of the complaint lodged before the Commission. I will only delve into the issue of whether the Commission was seized of jurisdiction to hear and determine the merits of the Complaint alleging that the applicant had published false information and whether that complaint fell within the ambit of a contractual relationship therefore a no-go zone for the Commission, as alleged by the applicant.
10. As correctly submitted by all the parties to these proceedings, jurisdiction is everything without which, a court of law or tribunal acts in vain. It follows that before exercising jurisdiction, the courts or tribunals must first determine whether they are possessed with the requisite jurisdiction to entertain any dispute placed before them.



11. This is because jurisdiction is conferred by *the Constitution* and statutes. A court of law or tribunal cannot arrogate itself of jurisdiction that it does not have and neither can parties confer jurisdiction by consent or agreeing to be heard before a court or tribunal that is devoid of jurisdiction. It is for that reason that issues of jurisdiction are raised at the earliest opportunity in any proceedings so that the court or tribunal can determine whether it has jurisdiction to entertain the dispute or not.

12. The Court of Appeal in *Jamal Salim v Yusuf Abdulahi Abdi & another Civil Appeal No. 103 of 2016 [2018] eKLR* stated as follows concerning jurisdiction:

“Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in *Adero & Another vs. Ulinzi Sacco Society Limited [2002] 1 KLR 577*, as follows;

- 1) .....
- 2) The jurisdiction either exists or does not ab initio ...
- 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.”

13. On the centrality of jurisdiction, the Court of Appeal in *Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others (2013) eKLR* stated that:

“So central and determinative is the jurisdiction that it is at once fundamental and overarching as far as any judicial proceedings in concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren *cui-de-sac*. Courts, like nature, must not sit in vain.

14. On the source of a Court’s jurisdiction, the Supreme Court of Kenya in *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR* stated as follows:

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”



15. In *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* [2018] eKLR, the Court of Appeal further stated:

“(44) .... a party cannot through its pleadings confer jurisdiction to a court when none exists. In this context, a party cannot through draftsmanship and legal craftsmanship couch and convert an election petition into a constitutional petition and confer jurisdiction upon the High Court. Jurisdiction is conferred by law not through pleading and legal draftsmanship. It is both the substance of the claim and relief sought that determines the jurisdictional competence of a court...”
16. From the preceding citations, it is sufficiently settled that a Court’s jurisdiction is derived from *the Constitution*, Acts of Parliament or both.
17. According to the applicant, the First Respondent’s authority and mandate is confined to complaints related to violations of the Code of Conduct for the Practice of Journalism in Kenya and does not extend to contractual matters. It cites Section 31 of the Act which provides for the functions of the Commission and argues that the said functions are limited to:

Mediate or adjudicate disputes between the government and the media and between the public and the media and intra media on ethical issues; ensure the adherence to high standards of journalism as provided for in the code of conduct for the practice of journalism in Kenya; and achieve impartial, speedy and cost-effective settlement of complaints against journalists and media enterprises, without fear or favour in relation to the Act.
18. Further argument by the applicant is that it is not enough for a party to file a Complaint with the Commission on the premise that a person is regulated under the *Media Council Act*. That the Complainant must prove that the Complaint meets the basic minimum of a violation of the code of conduct for the practice of journalism in Kenya. That without the existence of the minimum ingredients of a Complaint before the First Respondent, then the 1<sup>st</sup> respondent would be deprived of jurisdiction to admit the complaint.
19. Reliance was placed on the Court of Appeal case in *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] KECA 58 (KLR), where the court stated inter alia that:

“As a creature of statute, the council can only do that which its creator (the Act) and the rules made thereunder permit it to do.”
20. It was submitted that the First Respondent has a clear and limited mandate, and stretching it to accommodate matters outside its jurisdiction would be both legally unsound and procedurally improper, citing the saying that “a river does not flow beyond its source, and neither should a statutory body exceed the boundaries of its enabling statute.”
21. The applicant urged this Court to find that the First Respondent lacks the jurisdiction to hear the Complaint dated 25th October, 2024 which is premised on a contractual dispute and that the appropriate forum for contractual matters remains the courts or an agreed-upon dispute resolution mechanism.
22. The applicant prayed that this Court allows the Application as prayed and therefore quash the decision and/or order of the First Respondent issued on 13th February 2025 in Complaint No. 12 of 2024;



Syokimau Residents Association v Nation Media Group and resultantly dismiss the Complaint dated 25th October 2024 for want of jurisdiction.

23. On the part of the respondents, although they filed their respective affidavits in reply and submissions separately, they vehemently opposed the application and contended that the 1<sup>st</sup> respondent has jurisdiction to hear and determine the complaint hence the preliminary objection was without any merit.
24. They deposed and submitted that the jurisdiction of the 1<sup>st</sup> Respondent to hear and determine the complaint is informed by sections 31 and 32 of the [Media Council Act](#) Cap Laws 411B of Kenya.
25. For this court to determine whether or not the 1<sup>st</sup> respondent had jurisdiction to admit the complaint filed by the 2<sup>nd</sup> respondent concerning alleged false caveat emptor Notice, it must look at the jurisdiction which the statute confers on the Complaints Commission.
26. Section 31 of the [Media Council Act](#) provides for the Functions of the Complaints Commission as follows:

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 for 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 this Act.
27. On the other hand, section 32 provides for the Powers of the Commission in discharge of functions as follows:

The Commission shall have all the powers incidental to and necessary for the effective discharge of its functions under this Act and any other written law and shall—

- (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.
28. Section 33 further provides for Powers of the Complaints Commission in the following terms:
    - (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 this Act; and
      - (b) appear before the Complaints Commission for examination concerning matters relevant to the investigation of any complaint made under this Act.



- (2) The Commission shall not be bound by the rules of evidence as set out in the *Evidence Act* (Cap. 80).
- (3) Except as expressly provided for in this Act or any regulations made pursuant to this Act, the Complaints Commission shall regulate its own procedure.

29. Regarding complaints, section 34 of the Act provides as follows, verbatim:

Complaints

- (1) A person aggrieved by—
  - (a) any publication by or conduct of a journalist or media enterprise in relation to this Act; 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 Complaints Commission setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.
- (2) A complaint under section 31 may be made—
  - (a) orally, either in person or by any form of electronic communication; or
  - (b) in writing, given to the Registrar of the Complaints Commission setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.
- (3) Where complaints are oral, the Commission may require them to be reduced in writing within seven days, unless it is satisfied there are good reasons for not doing so,
- (4) A complainant shall disclose to the Commission—
  - (a) the complainant's name and address; and (b) other information relating to the complainant's identity that the Commission reasonably requires.
- (5) Despite subsection (4), the Commission may—
  - (a) keep information provided by a complainant confidential if there are special circumstances or the Commission considers it is in the complainant's interests to do so; or
  - (b) accept an anonymous complaint concerning an issue of public interest, or where no clearly identifiable person or group is affected.
- (6) The Commission may ask a complainant to provide more information about the complaint within a reasonable time fixed by the Commission.
- (7) The Commission may at any time require a complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration.
- (8) Without prejudice to the functions of the Council set out in section 6 of the Act, the Council may take up a complaint on its own initiative, and forward the same to the Commission for determination where in its opinion the complaint has public interest implications.
- (9) The Commission may refer a complaint made under subsection (1) to the Communications and Multimedia Tribunal established under the *Kenya Information and Communications Act*,



1998, where the Commission determines that the complaint relates to a matter which falls within the mandate of the Tribunal.

30. Under the Second Schedule to the Act as stipulated in section 45 of the Act, the Act creates a Code of Conduct for the practice of journalism and outlines in the said Code, the Code mandates, among others, accuracy and fairness and provides as follows, regarding these two attributes:

2. Accuracy and fairness

- (1) A person subject to this Act shall write a fair, accurate and an unbiased story on matters of public interest.
- (2) All sides of the story shall be reported, wherever possible.
- (3) Comments shall be sought from anyone who is mentioned in an unfavourable context and evidence of such attempts to seek the comments shall be kept.
- (4) Whenever it is recognized that an inaccurate, misleading or distorted story has been published or broadcast, it shall be corrected promptly.
- (5) Corrections shall present the correct information and shall not restate the error except when clarity demands.
- (6) An apology that results from the determination of the Council shall be published or broadcast whenever appropriate in such manner as the Council may specify.
- (7) A correction under this paragraph shall be given same prominence as that given to the information being corrected.
- (8) A person subject to this Act shall not publish a story that fall short of factual accuracy and fairness.

31. I have taken the liberty to reproduce the above provisions of the Act and the Code of Conduct for the practice of journalism in order to appreciate the legal framework and scope of the Complaints Commission as established under Section 27 of the *Media Council Act* (No. 46 of 2013). The Complaints Commission as seen above derives its mandate from Section 31 of the Act. Its primary functions include mediating or adjudicating disputes between the government and the media, between the public and the media and intra-media on ethical issues. Additionally, the Complaints Commission ensures adherence to high standards of journalism as outlined in the Code of Conduct for the Practice of Journalism in Kenya.

32. Consequently, in summary, it is now clear to this Court that the jurisdiction of the Complaints Commission encompasses complaints related to:

Any publication by or conduct of a journalist or media enterprise in relation to the *Media Council Act*; and actions that limit or interfere with the constitutional freedom of expression of a journalist or media enterprise.

33. From the list of items stated above on what would constitute a breach of the Code of Conduct, and given that the 2<sup>nd</sup> respondent herein complained against the applicant for alleged publication of false or incorrect information regarding the alleged non-existence of the Syokimau Farms Limited and the Title to the Land stated in the caveat emptor Notice, I find that the Complaints Commission had the jurisdiction to receive the complaint and examine it in line with the procedures outlined in section 35 of



the Act and determine whether the alleged complaint can constitute a breach of the Code of Conduct. Accordingly, I find that the Complaints Commission is empowered to address such complaints.

34. It is not lost to this Court that under section 35 (3) of the Act, after considering each party's submissions, the Commission shall then conduct a preliminary assessment to determine the admissibility or otherwise of the complaints lodged within fourteen days. Under subsection (4), the Complaints Commission or any of its panels may, after conducting a preliminary assessment of a complaint, and being of the opinion that the complaint is devoid of merit or substance, dismiss such complaint and give reasons thereto.
35. It is therefore not true to say that in the circumstances of this case, the 1<sup>st</sup> respondent was interfering in what the applicant considers to be a contractual relationship with Syokimau Farms Limited. The 2<sup>nd</sup> respondent annexed a Gazette Notice to show that the Syokimau Farms Limited had been voluntarily wound up in 2013 and that there were decisions of the Court confirming that position hence it could not issue a caveat emptor Notice.
36. All that the 2<sup>nd</sup> respondent needed was a correction of what it considered to be untrue information or publication regarding Syokimau Farms Limited and the existence of the land parcel which, according to the 2<sup>nd</sup> respondent, was equally non-existent, having been dully subdivided and titles issued to individuals.
37. The applicant's claim that it had a contractual relationship with Syokimau Farms Limited could only have formed its defence and not a matter to be raised as a preliminary objection challenging the jurisdiction of the 1<sup>st</sup> respondent.
38. In this case, the Complaints Commission had not even assessed the complaint to establish whether it was admissible. For the Complaints Commission to determine whether the complaint was anchored on the provisions of the Law of Contract as alleged by the applicant in its notice of preliminary objection dated 30<sup>th</sup> November, 2024, the Complaints Commission had to take evidence from parties. A case where evidence is required to determine the merit of the issue at hand cannot be determined by way of a preliminary objection.
39. In this regard, I must revert to the question of what a preliminary objection is as defined in law and judicial precedents.
40. According to the Black Law Dictionary, a Preliminary Objection is defined as:

“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary...”
41. In *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Limited* (1969) EA. 696, Lord Charles Newbold P. held that a proper preliminary objection constitutes a pure point of law. The Learned Judge then stated as follows regarding a preliminary objection, warning against improper raising of points by way of Preliminary objection which does nothing but unnecessarily increase costs and, on occasion, confuse the issue:

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. A preliminary Objection is in the nature of what used to be a demurer it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of Preliminary objection does nothing



but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

42. In *Attorney General & another v Andrew Mwaura Githinji & another* [2016] eKLR, it was reiterated that:

“As it explicitly extrapolates in a more concise and surgical precision what tantamount to the scope, nature and meaning of a Preliminary Objection inter alia:-

- i. A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
- ii. A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
- iii. The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.
- iv. It is trite law that a preliminary objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter. From the most of them of the issues and facts of contention in this objection are to be adduced during a full trial. ...”

43. Similarly, in *Oraro v Mbaja* [2005] eKLR 141”, on the nature of preliminary objections, the Court observed that:

“A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”[ emphasis added]

44. In the instant case, I am satisfied that the 1<sup>st</sup> respondent Media Complaints Commission is well within its jurisdiction to address complaints concerning the publication of alleged falsehoods or incorrect information, provided the complaint aligns with the provisions of the *Media Council Act* and the Code of Conduct for journalism. The fact that in a paid advertisement, the applicant may not have known whether the advertisement or notice of caveat emptor was genuine or not or whether the applicant published the notice innocently, is a matter of evidence to be adduced before the Complaints Commission, as was held by the Court of Appeal in a defamation matter between James Kimeu Mulinge v Nation Media Group [2018] e KLR a case relied on by the applicant in urging its preliminary objection dated 30<sup>th</sup> November, 2024.

45. Furthermore, even in the Kimeu Mulinge case, the Court had to hear evidence of alleged defamation before arriving at a determination as to whether the impugned publication was defamatory or not and on appeal to the Court of Appeal, the Court found that the publication of the impugned Notice was innocent believing it to be bona fide and therefore could not have been driven by Malice.



46. What was expected of the Complaints Commission in this case was to examine the complaint lodged and determine whether prima facie, it fell within its mandate to admit it to hearing.
47. As correctly submitted by the respondents, section 43 (1) of the *Media Council Act* empowers a person who is aggrieved by any publication by or conduct of a journalist or media enterprise in relation to the Act to make a written complaint to the Complaints Commission setting out the grounds for the complaint, nature of the injury suffered or damage suffered and the remedy sought. The 2<sup>nd</sup> respondent's complaint was that the applicant published, misleading information which had adversely affected the residents of Syokimau estate.
48. In the demand letter addressed to the applicant by the 2<sup>nd</sup> respondent, it was clearly stated that the publication of the notice of caveat emptor was in breach of the Code of conduct for the practice of journalism in Kenya. It was therefore upon the 1<sup>st</sup> respondent Commission to analyze the complaint and determine whether it disclosed a cause of action under the *Media Council Act* or not, and not for the applicant to stop the Commission from entertaining the complaint it prematurely.
49. The Commission, in its submissions, it should be noted, has clarified that indeed, it would not have jurisdiction in disputes between the media and the public over or emanating from an express contract between them both. In this case, there was no evidence that the 2<sup>nd</sup> respondent had any contractual relationship with the applicant over the publication of the caveat emptor notice. It is the 2<sup>nd</sup> respondent who was complaining that the publication was misleading and it was entitled to do so, where it was aggrieved by information it considered misleading, seeking for correction of the same, as stipulated in Article 35 (2) of *the Constitution* which guarantees every person the right to correction or deletion of untrue or misleading information that affects the person.
50. It cannot therefore be correct to say that the 1<sup>st</sup> respondent hang on jurisdiction which it did not have, to determine the merits or otherwise, of the complaint lodged by the 2<sup>nd</sup> respondent, noting that Clauses 2(4), (5) and (7) of the Code of Conduct provide for failure to correct misleading or distorted publication after being notified of the same and publish a correction; Clause 4(2) – failure to identify the source of the misleading and distorted publication and Clause 5(b), (c) and 6, - failure to account for its actions, respond to the Complaint's concern, investigate the complaint raised, grant the Complaint the opportunity to reply and ventilate the inaccuracies and correct errors promptly.
51. Those are the issues which the 1<sup>st</sup> respondent Complaints Commission would have been engaged in determining. To stop the 1<sup>st</sup> respondent from hearing the complaint and making its determination on the merits in this matter, in my view, would be violating the 2<sup>nd</sup> respondent's constitutional right guaranteed under Article 50 (1) of *the Constitution*, the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
52. Having found that the 1<sup>st</sup> respondent had jurisdiction to hear and determine the merits of the complaint filed by the 2<sup>nd</sup> respondent, I find that the decision by the 1<sup>st</sup> respondent to overrule the preliminary objection raised by the applicant cannot be faulted.
53. Consequently, I find the prayers sought by the applicant in the Originating Motion dated 12<sup>th</sup> March 2025 seeking judicial review orders of certiorari to quash the order issued by the 1<sup>st</sup> respondent on 13<sup>th</sup> February, 2025 in Complaint No. 12 of 2024 Syokimau residents Association v Nation Media Group Limited & Another is not merited. The Originating Motion is accordingly declined and dismissed.
54. As the dispute is still pending for merit determination before the 1<sup>st</sup> respondent, I order that each party shall bear their own costs of the Originating Motion dated 12<sup>th</sup> March, 2025.



55. This file is closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI, VIRTUALLY, THIS 27<sup>TH</sup> DAY OF MAY, 2025**

**R.E. ABURILI**

**JUDGE**

