MEDIA COUNCIL ACT 2013

THE COMPLAINTS COMMISSION RULES, 2019

IN EXERCISE of the powers conferred by Section 50 (1) of the Media Council Act, 2013 the Cabinet Secretary for the Ministry of Information Communications and Technology makes the following Rules —

PART I – PRELIMINARY

(1) These Rules may be cited as the Complaints Commission Rules, 2019 and shall come into force upon publication in the Kenya Gazette.

2. In these Rules unless the context otherwise requires-


“Advocate” -means an advocate of the High Court of Kenya as defined in the Advocates Act (Cap 16).

“Agent” means a person that is authorized by another to act on their behalf.

“Authorised Officer”- means a person who has been formally empowered by an organisation or entity to conduct business on its behalf.

“Chairperson”- means the Chairperson of the Complaints Commission

“Commissioner” means a member of the Complaints Commission appointed under Section 27 of the Act.

“Complaint” means a complaint made in the manner provided under Section 34 of the Act.

“Complainant” means any person who makes a complaint pursuant to Section 34 of the Act.

“Hearing” means a hearing before the Commission or panel for the purposes of preliminary assessment and/or substantive hearing as provided for under Section 35(3) and 37 of the Act respectively.

“Hearing Panel” means a panel of the Commission established by the Chairperson under Section 37(2) of the Act.

“Respondent” means a party against whom a complaint is filed before the commission.

“Registrar” means the person responsible for the day to day operations of the Commission’s registry.
PART II – Complaints

3. (1) A complaint may be lodged by any person as provided for in Section 34 of the Act.

(2) A complaint may be lodged at the offices of the Commission in Nairobi or at any other designated sub-registries as the Commission may determine.

(3) A complaint lodged in oral or electronic form shall be reduced into writing in the prescribed form as shall be prescribed by the Commission from time to time.

(4) A complaint set out in the prescribed form shall be accompanied by all supporting documents.

(5) The Respondent shall file a Statement of Response to the Complaint accompanied by all supporting documents.

(6) All applications to the Commission shall be by way of a Notice of Motion accompanied by a supporting affidavit.

4. Register

(1) The Commission shall keep a Register of complaints in which all particulars of complaints shall be entered.

(2) Upon filing, the complaint shall be numbered and recorded sequentially in the Register of Complaints.

(3) Subject to these Rules, the Commission may publish or otherwise disclose to any person any information held in 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.

(c) raising issues of public interest

5. Processing of Complaints

(1) All complaints shall be received and registered by the Registrar or any other person duly authorized by the Commission.

(2) Where an anonymous complaint is lodged concerning a matter of public interest, the Registrar shall notify the Council to take up the Complaint, and the Council shall be deemed to be the Complainant for purposes of registration, processing and determination of the Complaint.

(3) The Respondent shall, within fourteen (14) days from the date of receipt of the Notice of Complaint under Section 35(1) of the Act, file and serve a Statement of Response together with supporting documents in response to the issues raised in the Complaint.

(4) The Statement of Response shall be filed with the Commission and served upon the Complainant through personal delivery or any other manner that the Commission may direct.
For purposes of Section 35(1) of the Act, a **Notice of Complaint** shall be made in the prescribed form.

### 6. Language of the Commission

(1) Proceedings before the Commission shall be conducted in English, Kiswahili or Kenyan Sign language.

(2) The Commission shall at its own cost provide an interpreter upon the request of either party.

### 7. Preliminary Assessment

(1) Upon assessment of a complaint under this rule, the Commission shall reject any complaint if it determines that it is:

   (a) not within the mandate of the Commission;

   (b) subject to court proceedings.

   (c) vexatious, frivolous, or otherwise an abuse of the Commission’s process;

   (d) it is substantially the same as a previous complaint: -

      (i) whether made by or on behalf of the same Complainant or it concerns the same subject matter as a previous complaint: and

      (ii) the complaint has already been dealt with by the Commission.

   (e) Six (6) months have lapsed since the subject matter of the complaint arose and no sufficient cause has been shown for the delay in making the complaint.

### 8. Application for review

(1) A party may apply for review of the rejection or dismissal of a Complaint as provided under Section 35(5) of the Act.

(2) An application for review pursuant to Section 35(5) 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 dismissal was made by the Commission, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason to be determined by the Commission.

(3) An application for review shall be made to the panel that made the decision to reject the Complaint.

(4) If for any other reason a member of the panel is precluded by absence or any other cause, from participating in the application, the Chairperson may designate any other Commissioner to join the panel.

### 10. Determination of the application for review

(1) 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.

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

(3) Where an application for review is rejected, the complaint shall lapse and the Complainant shall be notified accordingly.
PART III

11. Service of Documents
(1) Whenever it is practicable, any document required to be served under these rules shall be made by a duly licensed process server to the party in person, his or her advocate or an agent empowered to accept service, in which case service on the agent shall be sufficient.
(2) Despite Sub-rule 1 a party must prove to the Commission that a document was served in terms of these rules.
(3) If a document is served by hand, an affidavit of service clearly indicating the name and designation of the recipient and the place, time and date of service and sworn by the process server who delivered a copy of the document to the other party or left it at any premises shall be filed as proof of service.
(4) If proof of service in accordance with sub rule (2) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.

12. Service on an incorporated body
(1) 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 or institution.

13. Substituted service
(1) Where the Commission is satisfied that for any reason a document cannot be served in accordance with any of the preceding Rules, it may on application, order the document to be served by
   (a) Registered post
   (b) affixing a copy thereof in some conspicuous part of the premises, if any,
   or
   (c) in such other manner as the Commission shall direct.
(2) Substituted service under an order of the Commission shall be as effectual as if it had been made on the party personally.
(3) Where the Commission makes an order for substituted service it shall fix such time for the appearance of the party as the case may require.

14. Prepaid postage
Any document or notice sent by registered post by a party or the Commission is presumed, until the contrary is proved, to have been received by the person to whom it was sent within Seven (7) days after it was posted.

PART IV Hearing

15. Hearing of Disputes
(1) The Commission shall set a date on which the Complaint shall be heard and shall notify both the Complainant and the Respondent.
(2) On the hearing date, the complainant and their witnesses shall be heard first followed by the Respondent and their witnesses.
(3) Summons by the Commission shall be in the prescribed form.
16. Attendance by parties to a dispute

(1) The parties to a dispute shall attend the hearing either in person, by an advocate or a duly authorized agent.

(2) Where a party to a dispute, their advocate or by a duly authorized agent fails to attend the hearing, the Commission or any of its panels may—
   (a) continue with the proceedings;
   (b) adjourn the proceedings;
   (c) dismiss the matter; or
   (d) give any other direction the Commission or any of its panels may deem fit.

(3) In exercising discretion under Rule 16(2), the Commission or any of its panels shall take into account—
   (a) whether a party, the advocate or duly authorized agent has been served
   (b) whether a party, the advocate or duly authorized agent has previously failed to attend proceedings in respect of that dispute or
   (c) any sufficient reason given for that party advocate or authorized agent’s failure to attend.

PART V Appeals

17. Appeals to the Complaints Commission

(1) A party aggrieved by a decision of the Council made pursuant to Section 6 of the Act, may file an appeal against the decision of the Council to the Commission and serve the Council within thirty (30) days from the date of the decision.

(2) The appeal shall be accompanied by the following documents;
   (a) Memorandum of appeal listing the grounds of appeal and the remedy sought.
   (b) Proceedings of the Council resulting in the decision
   (c) Decision being appealed against and
   (d) Any other document that may assist the Commission to determine the appeal

(3) Upon service of the appeal to the Council, the Council shall file its response with the Commission and serve the appellants within thirty (30) days.

(4) After filing of the appeal and service of the response if any, the file shall be placed before the Commission for directions

(5) The quorum for purposes of hearing the appeal shall be a minimum of five members.

(6) Upon considering the appeal, the Commission may either;
   (a) vary,
   (b) set aside,
   (c) Uphold the decision of the Council or
   (d) Give any other order that it deems fit and just to grant.

(7) A party aggrieved by the decision of the Commission may proceed to the High Court in the manner provided for under Section 42(2) of the Act.
PART VI Extension of time

(13) Despite the foregoing provisions of this Rules, the Commission may, extend the period specified in respect of any matter under this section by a period not exceeding fourteen days in a manner it deems fit.

Miscellaneous Provisions

19. The Commission or any of its panels may, of its own accord or on application by a party, consolidate more than one dispute provided that;

   a) the same question of law or fact arise in both cases
   b) the reliefs claimed in the disputes arise out of the same transaction or series of transactions
   c) the consolidation shall not prejudice or confer undue advantage to either party.

20. Prescribed Forms

The Commission shall prescribe and publish forms from time to time for use under the provisions of the Act and Rules.