

NATIONAL COUNCIL FOR LAW REPORTING



GUIDELINES ON THE PROTECTION OF THE PRIVACY AND CONFIDENTIALITY OF PERSONS IN JUDICIAL OPINIONS

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1. Introduction

These redaction guidelines are developed to aid the National Council for Law Reporting staff in anonymising judgments prior to publication of the Kenya Law Reports.

In principle courts are responsible for ensuring privacy requirements with respect to personal information in judgments are met. However the National Council for Law Reporting has a responsibility to redact certain judgments off personal and private details to protect the identity of vulnerable groups in society.

Redacting a decision means to remove or replace certain information from the electronic copy of a decision in order to make the copy fit for public dissemination, in compliance with legal restrictions on publication, specific court orders or directives and publishing ethics.

2. Decisions to be redacted

It is the responsibility of the National Council for Law Reporting to redact personal information from decisions in the following circumstances

- a) In compliance with an order banning publication of specific information received together with a specific document;
- b) In response to a user's request for anonymisation;
- c) In compliance with statutory provisions on publication;
- d) When inventorising sensitive cases;
- e) When a document contains personal identifiers.

The National Council for Law Reporting will endeavour to perform automated monitoring for sensitive content. However if the editors encounter decisions which qualify for anonymisation under the rules laid down below which have not been discovered through automatic means, those should be anonymized using the in-house anonymiser or any other officer that the editors may appoint.

(a). In Compliance with a Publication Ban and Anonymization on Request by a Concerned Party or another website user.

Decisions accompanied by a publication ban should be flagged for anonymisation by the editors.

Should a user or a concerned party make an anonymisation request to the National Council for Law Reporting, the editors should exercise their discretion based on the merits of each case .In the event of a confirmation, the National Council for Law Reporting should anonymise the judgment in compliance with the anonymisation guidelines set out in this document.

(b). In Compliance with Statutory Prohibitions on Publication

The National Council for Law Reporting shall continuously conduct a comprehensive research in view of identifying relevant statutory prohibitions on publication of certain information contained in judgments .

The Children Act section 76 provides

(5) In any proceedings concerning a child, whether instituted under this Act or under any written law, a child's name, identity, home or last place of residence, school shall not, nor shall the particulars of the child's parents or relatives, any photograph or any

depiction or caricature of the child, be published or revealed, whether in any publication or report (including any law report) or otherwise.

(6) Any person who contravenes the provisions of subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months, or to both.

For the avoidance of doubt, this provision shall apply to all proceedings concerning a person who was a child at the time of the commencement of the litigation or proceedings, even if that person subsequently attains the age of majority before the litigation or proceedings have been closed.

Though the provision is to apply to all proceedings, particular care should be taken to ensure that it is applied in the following types of cases:

Sensitive Cases

Particular care should be taken in dealing with cases of sexual offences and family law (adoption of infants/children, divorce, custody, maintenance and succession cases). The information listed under each category of cases should be anonymized:

a. Sexual offence and Domestic Violence Cases

Cases involving domestic violence, defilement, sodomy, unnatural offences, prostitution, rape, etc.

- i. the names of the victim;
- ii. the names of the parents, relative witnesses;
- iii. the victim's place of residence (e.g., village, estate but not including the district or province if mentioned.);
- iv. Any other personal information.

b. Adoption Cases

- i. the name of the child who is the subject of the application;
- ii. the names of both the child's biological parents and adoptive parents;
- iii. the child's relatives;
- iv. the child's school place of residence;
- v. Any other personal information.

*In such cases, the names of the Adoption Centre/Orphanage/Children's Home need not be anonymized.

c. Divorce, Custody & Maintenance Cases

- i. the name of the applicant, respondent and co-respondent;
- ii. the names of the children;
- iii. the relatives of all the above;
- iv. the addresses, place of residence, schools of all the above;
- v. Any other personal information.

d. Succession Cases

* Not all succession cases need be anonymized. However, because such cases often include references to children, they need to be monitored for the purpose of anonymizing the identifiers of children and any other personal information.

e. Cases involving child offenders

The accused, victim or witness in the proceedings is under the age of 18 years at the time of trial or was under the age of 18 years at the time when the offence he or she is charged with was said to have been committed, the following should be anonymized:

- i. the name of the accused;
- ii. Any other personal.

f. Cases disclosing HIV/AIDS status

Where in a case the HIV/AIDS status of a person is disclosed, especially where the status is HIV-positive, the following should be anonymized:

- i. the name of the person;
- ii. any other personal information.

3. Personal Data Identifiers

Personal data identifiers must be removed on all occasions. Personal data identifiers include;

- i. Contact information-address (division, sub-division, village street name and number) postal code, phone, fax, e-mail address;
- ii. Unique personal identifiers;
 - a. National identity card numbers;
 - b. Passport number;
 - c. Passwords and access codes;
 - d. Any serial/registration/admission/membership numbers, etc;
 - e. Medical records;
 - f. Bank accounts or credit card numbers and accounts.

- iii. Personal possession identifiers-
 - a. motor vehicle registration number;
 - b. item serial numbers;
 - c. licence numbers.

4. Anonymisation Objectives

The following standards should apply to situations where a publication restriction prohibits the disclosure of information that could lead to the identification of a specific individual named in judicial proceedings. This information includes the persons name but also other facts that, combined together or with other sets of data, allow members of the public to single out this person

Several objectives should be taken into account in determining what facts should be removed or preserved in order to properly de-identify a person in published decisions when required by law. These objectives include;

- Ensuring full compliance with any restriction on publication
- Fostering openness of the judicial system
- Maintaining good readability of the redacted reasons
- Limiting redaction costs and publication delays

The goal here is to reach a reasonable level of obscurity with regard to a persons identity, in accordance with widely –accepted standards and practices

5. Information to remove

In order to properly de-identify a person in compliance with a court order/directive or a statutory prohibition on anonymization, information that leads to this persons identification must be removed in a consistent manner, certain types of information should be systematically removed, whereas other types of information should be removed only where doing otherwise would pose a high risk of re-identification of that person

i). Personal Data Identifiers

In addition to the aforementioned personal data identifiers, subject to systematical removal, the following should also be removed;

- Names, nicknames and aliases
- Day and month of birth (year and age can be disclosed)

The day and month of birth may be left unredacted should this serve the readability of the reasons of the decision

ii). Personal Acquaintances Information

Personal acquaintances information are names and other personal data of persons or organizations with which a person is directly involved. This type of information would include names and other personal data of;

- Extended family members –parents, children, brothers and sisters, in-laws, grandparents, cousins.
- Foster family members ,tutors, guardians, teachers, babysisters
- Friends ,co-habiting persons, lessors, tenants, neighbours
- Employers, employees, co-workers, business associates, schools, sports teams
- Organizations or institutions in which the person is involved such as business, schools, sports teams

This information should be redacted from judgments on all occasions in relation to the person whose identity is to be protected

iii. Specific Factual Information

Specific factual information should be removed only when its presence is likely, on a balance of probabilities, to allow for the protected person's identification, taking into account that personal data identifiers and acquaintances information has been removed. Specific factual information includes;

- Names of communities or other geographical locations smaller than the judicial district
- Names of accused or co-accused persons
- Names of persons acting in an official capacity in a small community such as an expert witness, a social worker, a police investigator
- Names of small local business such as a store, bar or hotel in which the facts have taken place
- Atypical facts such as
 - a) Names of very small communities or organizations such as certain rural communities or religious groups

- b) Rare professional status or position such as a high profile political office or the fact that a person is a renowned athlete or artist
- c) Prestigious grants and award for which the protected person is a known recipient
- d) Unusually high personal income or large number of children in a family

Sometimes the presence of specific factual information could increase the risk of identification. This type of information should also be avoided unless it is clear that once personal data is eliminated from the judgment, there is a minimal risk of identification through this specific factual information. Caution should be exercised here as often leaving such specific factual information out can impair the readability of the reasons for judgment. Should you be in doubt as to the removal of specific factual information, seek the advice of the editors

6. Information to Preserve

Certain types of specific factual information may be safely included if doing so will either:

- i. Improve readability and
- ii. Explain the rationale for the decision.

The public interest in providing a cohesive, reasoned decision outweighs the possibility of some people in the local area deducing the individuals by piecing together the specific factual information.

This information includes:

- Year of birth
- Gender and Sexual Orientation
- Race, ethnic and national origin
- District, jurisdiction and country of birth and residence
- Professional status and occupation
- Marital and Family Status
- Religious beliefs and political affiliations
- Case Information: Court file number, registry location, hearing dates
- Judicial district or larger geographical denomination where the events have taken place or where the case is filed
- Dates of events
- Nature of an offence
- Nature of the relation between the persons involved in the case

7. How to Remove Information

This could be done either by:

- i) Replacing with initials
- ii) With omission marks between square brackets

For purposes of readability, terms that could denote the nature of the omitted information should be preserved. Special precaution should be taken to remove the information found on all parts of the document, including the cover pages, headnotes and footnotes, as well as information that could be revealed by the case name, the filename and any hidden data that could be hidden within the file.

8. General Principles

1. Fictitious Name or Pseudonym

If a judge has intentionally used a fictitious name or pseudonym to replace a real name, this fictitious name or pseudonym must be used instead of initials.

2. Same Initials

Even if variations occur in the way an individual or organization is named in the decision, the same initials should be used to replace each occurrence of this name, except where variations in the name are in and of themselves relevant in order to preserve the decisions' readability

In rare instances where initials combined with the facts that have to be preserved could reveal the identity of an individual, the letter 'X' is used to replace the name instead of initials. For additional individuals, the letter 'Y' is used for the second, 'Z' for the third, 'A' for the fourth, 'B' for the fifth and so on.

Name of an Individual

Initials should be used to replace the name of an individual. Only one initial for each forename is used, without spaces only one Initial is used for a compound name.

EXAMPLES:

<u>NAME</u>	<u>REPLACED BY:</u>
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Mary Jane Wanjiru
Timothy Otieno

M.J.W
T.O

When the name of a whole family must be replaced, the initial of this name is used.

NAME:	REPLACED BY:
The Smiths, Kevin foster family [...]	The S.s, K.R's foster family
The Mutuku's House was sold to [...]	The M's house was sold to [...]

So as to avoid confusion between many individuals which would be referred to by the same initials, a number is added immediately after the set of initials of each of the other persons named in the decision that have the same initials. This number is '1' for the first individual named in the decision, '2' for the second, and so on.

EXAMPLES

NAMES	REPLACED BY:
John McKeown and James Morgan	J.M 1 and J.M 2

Name of an Organisation

When the name of an organisation must be replaced (e.g for a person's employer, business, school or community), only its first initial is used, followed by omission marks between square brackets. Whenever possible, the common terms found in the name of the organisation are not replaced, in order to improve the readability of the decision.

EXAMPLES	REPLACED BY:
Air Canada	A [...]
Kabarak High School	K [...] High School
Municipality of Thika	Municipality of T [...]

To avoid confusion between the organizations between organizations which should be referred to by the same initial, numbers are added in the same way as with the names of individuals.

EXAMPLES	REPLACED BY:
Air Canada, Alimport and Alcan	A1[...], A[...] AND A3[...]

N.B

These Guidelines were developed for Kenya Law Reports by Andrew Halonyere and Michael M. Murungi with the assistance of the South African Legal Information Institute(SAFLII).

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