Regus Kenya Limited v Data Protection Commissioner & another (Civil Appeal E472 of 2023) [2025] KEHC 13491 (KLR) (Civ) (30 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13491 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E472 OF 2023

AC MRIMA, J

SEPTEMBER 30, 2025

BETWEEN

REGUS KENYA LIMITED ..... APPELLANT

AND

DATA PROTECTION COMMISSIONER ..... 1ST RESPONDENT

JAMES NDUNGO ..... 2ND RESPONDENT

(Being an appeal from the decision of the Data Protection Commissioner dated 23rd May 2023 and Penalty Notice dated 11th April 2023 arising from the Enforcement Notice dated 16th February 2023)

JUDGMENT

Background:

1. James Ndungo, the 2nd Respondent herein, lodged a complaint before the Data Protection Commissioner, the 1st Respondent herein. He sought to stop Regus Kenya Limited, the Appellant herein, from incessantly sending him automated improper spam information.

2. Acting on the complaint, the 1st Respondent issued a Complaint Notification to the Appellant dated 27th October 2022. It requested for a response to the complaint. None was forthcoming. It issued a subsequent Notification of Complaint dated 11th November 2022, reminding the Appellant of the complaint filed against it. The failure by the Appellant to respond to the second Notification of Complaint prompted the 1st Respondent to escalate the matter further. It issued the Enforcement Notice dated 16th February 2023 where it required the Appellant to, within 30 days, put in place a raft of measures to remedy or eliminate the situation that would make it likely for violation of personal data to occur.

3. The Appellant did not act on the Enforcement Notice. Accordingly, the 1st Respondent issued the Penalty Notice dated 11th April 2023, penalizing the Appellant to Kshs. 5,000,000/- for failure to demonstrate compliance with theData Protection Act (hereinafter referred to as 'the Act').

4. Aggrieved, the Appellant lodged a review application before the 1st Respondent which was dismissed. The instant appeal subject of this judgment was then filed.

The Appeal:

5. Through a Memorandum of Appeal dated 6th June 2024, the Appellant sought to have the appeal be allowed and the Penalty Notice set aside in its entirety on grounds as hereunder: -

    1. The Data Protection Commissioner erred in fact and in law in dismissing the Appellant's application for review dated 16th February 2023 seeking a review of the Enforcement Notice dated 16th February 2023 and in upholding the Penalty Notice dated 16th April 2023.

    2. The Data Protection Commissioner erred in fact and in law in proceeding to render a decision in the form of the penalty notice dated 11th April 2023 on the complaint lodged, after the lapse of 90 days from the date of notification of the complaint in total breach of section 56(5) of the Data Protection Act and in excess of jurisdiction.

    3. The Data Protection Commissioner erred in fact and in law in failing to accord the Appellant its right to a fair hearing and fair administrative action as enshrined under Article 50(1), 24, 47 and 48 of *the Constitution* and section 2, 4, 5, and 6 if the Fair Administrative Actions Act, when it dismissed the Appellant's application review dated 26th April 2013 seeking to review the enforcement Notice dated 16th February 2023 and instead upheld the Penalty Notice dated 11th April 2023.

    4. The Data Protection Commissioner erred in fact and in law by imposing an excessive fine of Kshs. 5,000,000/- against the Appellant without any consideration for the evidence tendered before it.

    5. The Data Protection Commissioner made a fundamental error in failing to address the issues of liability of the Appellant for the Complaint lodged and in proceeding to render its decision to uphold the penalty notice dated 11th April 2023, disregarded all evidence tendered by the Appellant in its defence.

    6. The Data protection failed to appreciate that it had the inherent power to investigate the complaint lodged and make a determination of the guilt or innocence of Appellant prior to rendering its decision vide the Penalty Notice dated 11th April 2023.

    7. The Data Protection Commissioner failed to appreciate that it had the obligation to review the Enforcement Notice and Penalty once evidence was tendered before it of the Appellant's innocence but failed to do so.

    8. That the Penalty Notice dated 11th April 2023 and fine of Kshs. 5,000,000/- is accordingly unlawful.

The Appellant's submissions:

6. In its written submissions dated 13th December 2025, the Appellant identified three issues for determination. The first one was in respect of the 1st Respondent's jurisdiction in issuing the Penalty Notice. It was its case that the Commissioner had no jurisdiction since section 56(5) of the Act

permitted it to investigate and render a decision within 90 days. While relying on Gichuhi & 2 Others -vs- Data Protection Commission; Mathenge & Another (Interested Parties) 2023 KEHC 17321 (KLR), it argued that since the complaint was lodged on 6th October 2021, the enforcement notice issued on 16th February 2023 and the Penalty Notice on 11th April 2023, long after the prescribed time for determination of an appeal lapsed, then the 1st Respondent had no jurisdiction.

7. Further to the foregoing, the Appellant faulted the 1st Respondent's failure to investigate the case, a prescription under section 56(5) and 57 of the Act, before rendering a decision. It claimed that such failure violated its right to fair administrative action guaranteed under Article 47 of *the Constitution*. It urged that the determination of the complaint without conducting investigations and thereafter imposing a maximum fine prescribed under the law runs amok the principles of natural justice. It quoted the Supreme Court in Gideon Sitelu Konchellah -vs- Julius Lekakeny Ole Sunkuli & 2 Others (2018) eKLR where it was observed: -

> .... It is not automatic that for any unopposed application, the Court will as a matter of cause grant the sought orders. It behoves the Court to be satisfied that prima facie, with no objections, the application is meritorious and the prayers may be granted.

8. On the issue of the amount of the penalty posed, the Appellant argued that no violations were ever established and imposing the maximum penalty was unjust and illegal. Support was drawn from Otieno -vs- Republic (1983) eKLR where it was observed that it is unusual to impose a maximum sentence on a first offender.

9. In challenging the decision to reject its application for review, the Appellant submitted that it only became aware of the Enforcement Notice on 11th April 2023 and exercised its right of review pursuant to the provisions of section 18 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, [hereinafter referred to as 'the Regulations'] within 30 days period. The Appellant contended that the 1st Respondent, despite its request for review rejected it, disregarded the evidence it presented and dismissed its application in violation of section 7(2)(b) of the Fair Administrative Actions Act.

10. Finally, the Appellant submitted that it did not violate the Act. It was its position that it had been in compliance of the measures detailed in the Enforcement Notice long before the institution of the dispute. It claimed that it had a Data Protection Policy, a mechanism of informing its clients the nature of use of their data 'an opt in' or 'opt out' choice. It was its case that the 2nd Respondent was its former client who ran into arrears for services of a virtual office agreement which led to termination of the contractual relationship.

The 1st Respondent's case:

11. The Commissioner, who is the 1st Respondent herein, challenged the appeal through written submissions dated 26th September 2024. In asserting propriety of the decision to reject the application to review the enforcement notice, it was its case that the said application was filed on 27th April 2023, a period of 40 days after the indicated review period, contrary to the provision of section 58(1) and (3) of the Regulations. It argued that the Appellant's claim of defective service was misleading since all notices and correspondence were properly served and it acknowledged receipt by countersigning each of the pages and that there were affidavits of service to that end.

12. The 1st Respondent challenged the claim that it erred in rendering a decision after the lapse of 90 days by stating that Act does not provide timelines within which enforcement penalties are issued. It argued that the Penalty Notice was informed by the Appellant's failure to comply with the Enforcement

Notice. It further argued that it would be amiss to interpret section 56(5) of the Act in a manner that would overlook the object and purpose of the Act which is to safeguard the right to privacy. The 1st Respondent maintained that it observed the tenets of fair administrative action since it afforded the Appellant the opportunity to respond and to remedy the breach complained about.

13. As regards the amount of penalty imposed, it was its case that it was within its discretionary threshold prescribed under section 64 of the Act.

14. In the end, it stated that the Enforcement Notice and Penalty Notice were in substance expeditious, efficient and lawful, reasonable and procedurally fair. It urged the appeal be dismissed.

The 2nd Respondent's case:

15. James Ndungo challenged the appeal through written submissions dated 27th September 2024. It was his case that the 1st Respondent complied with section 56(5) of the Act and did not act in excess of jurisdiction since the 90 days begin to run once the Commissioner admits the complaint and stops on the date the investigation report is prepared. He argued that the Appellant's position that the countdown begins when the complaint is lodged and stops upon commencement of enforcement is incorrect.

16. He also distinguished the decision in Gichuhi & 2 Others -vs- Data Protection Commission; Mathenge & Another (Interested Parties) 2023 KEHC 17321 (KLR) relied upon by the Appellant by stating that lodging of a complaint is distinguishable from admission and recognition of the date of admission of a complaint which is the trigger to commence the 90 day count down.

17. As to whether the 1st Respondent had power to entertain the Appellant's application for review of an Enforcement Notice, the 2nd Respondent submitted that once the timeline provided for under section 58(1) and (3) lapses, the Commissioner lacks jurisdiction to entertain review application. He argued that the Appellant window lapsed on 17th March 2023.

18. On the question of fair hearing, the 1st Respondent submitted that the Appellant was served with two invitations to make representations but it ignored them. It was its position that there was compliance with section 4(3) and (4) of the Fair Administration Actions Act.

19. Finally, on the issue of penalty, the 1st Respondent argued that the 1st Respondent acted within the provision of section 20 and 62 of the Act and urged that the appeal was without merit and be dismissed with costs.

Analysis:

20. Having carefully considered the record alongside the parties' submissions and the respective decisions referred to therein, the issues that arise for determination are as follows: -

    i. Whether the Commissioner had jurisdiction to issue the Enforcement and Penalty Notices against the Appellant.

    ii. Depending on above, the propriety of the penalty of Kshs. 5,000,000/-.

21. Section 64 of the Act accords any person against whom any administrative action is taken by the Commissioner, including in enforcement and penalty notices, to appeal to the High Court. Therefore,

this being a first appeal, this Court's role is well established. In Susan Munyi -vs- Keshar Shiani [2013] eKLR the Court of Appeal discussed its role as a first appellate Court as hereunder: -

> .... As a first appellate Court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.

22. Similarly, in Abok James Odera t/a AJ Odera & Associates -vs- John Patrick Machira t/a Machira & Co Advocates [2013] eKLR the Court set out the role of the first appellate Court in the following terms: -

> ... This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way. See the case of Kenya Ports Authority vs Kustron (Kenya) Limited 2000 2EA 212.

23. With the foregoing legal guidance, next is the consideration of the above issues.

Whether the Commissioner had jurisdiction to issue the Enforcement and Penalty Notices against the Appellant:

24. The Appellant's contention on this issue raises two sub-issues. The first sub-issue is whether that the Penalty Notice was issued by the 1st Respondent outside the 90-day window, which arguably was in contravention of section 56(5) of the Act, thus making the decision null and void for want of jurisdiction. The second sub-issue was whether that the Appellant was served with the Notification of complaint and Enforcement Notice.

25. Before getting down to the issue at hand, it is of essence to remind ourselves of the intention of the Act which is captured in its Preamble as follows: -

> An Act of Parliament to give effect to Article 31(c) and (d) of *the Constitution*; to establish the Office of the Data Protection Commissioner; to make provision for the regulation of the processing of personal data; to provide for the rights of data subjects and obligations of data controllers and processors; and for connected purposes, [emphasis added].

26. Article 31 of *the Constitution* is on the right to privacy. Therefore, the Act aims at giving effect to that right. Being one of the human rights under the Bill of Rights in *the Constitution*, suffice to first lay down the legal position on timelines regarding enforcement of human rights and fundamental freedoms under the Bill of Rights. The Court of Appeal in Eldoret Civil Appeal 51 & 58 (Consolidated) Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR reiterated the correct legal position on whether human rights and fundamental freedoms can be waived or acquiesced through an Act of Parliament. The Court rendered as follows: -

> 61. Guided and convinced of the sound jurisprudence that there is no time limit for filing a constitutional petition, we find the ground that the trial judge erred in failing to dismiss the Petition on account of delay, acquiescence and laches has no merit. Unless expressly stated in *the Constitution*, the period of limitation in the *Limitation of Actions Act* do not apply to violation of rights and freedoms guaranteed in *the Constitution*. The law concerning limitation of actions cannot be used to shield the State or any person from claims of enforcement of fundamental rights and freedoms protected under the Bill of Rights.

27. This position had been earlier on taken by the Court of Appeal in Metal Box Co Ltd vs. Currys Ltd, (1988) 1 All ER 341 and Kariuki Kiboi vs. Attorney General [2017] eKLR and was also applied in Peter Odoyo & another v Kenya National Highways Authority & 2 others; Council of Governors (Interested Party) [2021] KEHC 5751 (KLR) among other decisions. Therefore, the rule of the thumb in respect of any limitation relating to proceedings on enforcement of human rights and fundamental freedoms is that: -

(i) That human rights and fundamental freedoms can never be waived or acquiesced to by a person unless there is such enormous and unexplained delay in enforcement.

(ii) Statutory limitations do not apply to Petitions claiming infringement or threat to infringement of human rights and fundamental freedoms. A party, however, must account for the time between the alleged infringement or threat of infringement of the human rights and fundamental freedoms and the filing of the claim.

28. With the above legal position in mind, this Court will now deal with the first sub-issue relating to the timelines in Section 56[5] of the Act and as raised by the Appellant. Section 56 of the Act provides for complaints to the Commissioner. For ease of understanding this discussion, I will reproduce the entire provision as under: -

56. Complaints to the Data Commissioner

(1) A data subject who is aggrieved by a decision of any person under this Act may lodge a complaint with the Data Commissioner in accordance with this Act.

(2) A person who intends to lodge a complaint under this Act shall do so orally or in writing.

(3) Where a complaint made under subclause (1) is made orally, the Data Commissioner shall cause the complaint to be recorded in writing and the complaint shall be dealt with in accordance with such procedures as the Data Commissioner may prescribe.

(4) A complaint lodged under subclause (1) shall contain such particulars as the Data Commissioner may prescribe.

(5) A complaint made to the Data Commissioner shall be investigated and concluded within ninety days.

29. The Regulations also provide more insight as to what the 90-day period provided for in section 56(5) of the Act is in reference to. Regulation 6 provides as follows: -

6. Admission of complaint:

(1) The Data Commissioner shall undertake a preliminary review of a complaint, upon receipt of the complaint by the Office.

(2) The Data Commissioner may, upon undertaking a preliminary review of the complaint—

(a) admit the complaint;

(b) where applicable, advise the complainant in writing that the matter is not within the mandate of the Data Commissioner; or

(c) advise the complainant that the matter lies for determination by another body or institution and refer the complainant to that body or institution.

(3) Despite sub regulation (2), the Data Commissioner may decline to admit a complaint where the complaint does not raise any issue under the Act.

(4) Upon admission of a complaint, the Data Commissioner may—

(a) conduct an inquiry into the complaint;

(b) conduct investigations;

(c) facilitate mediation, conciliation or negotiation in accordance with the Act and these Regulations; or

(d) use any other mechanisms to resolve the complaint.

(5) Where a complaint is declined for admission under sub regulation (3), the complaint may be re-admitted within six months from the date of decline, where the complaint raises new issues for determination under the Act.

(6) A complaint under sub regulation (5) shall be lodged in accordance with regulation 4.

30. In sum, the Commissioner should undertake a preliminary review whenever a complaint is lodged. Once the review is complete, the Commissioner may either decline to admit a complaint where the complaint does not raise any issue under the Act or admit the complaint. The Commissioner may also advise the complainant that the matter lies for determination by another body or institution and refer the complainant to that body or institution. It is, however, of importance to note that the Regulations do not provide for the manner in which the Commissioner is to undertake the preliminary review of the complaint.

31. In the event the Commissioner admits a complaint after the review, the Commissioner may either conduct an inquiry into the complaint, conduct investigations, facilitate mediation, conciliation or negotiation in accordance with the Act and the Regulations or may use any other mechanisms to resolve the complaint.

32. Therefore, a holistic reading of Section 56 of the Act and Regulation 6 has it that the 90-day window only sets in when the following three steps applies. First, where the Commissioner has carried out a review of the complaint. Second, the Commissioner has admitted the complaint and, third, the Commissioner has decided to conduct investigations. Therefore, the period does not apply if, for instance, the Commissioner reviews and admits a complaint, but decides to adopt any of the other ways provided in Regulation 6 to deal with the complaint except investigations. That is to say, if the Commissioner opts for Alternative Dispute Resolution, then the timelines thereof will be defined by the guiding rules in ADR. However, even with this finding and holding, the Commissioner should remain alive to the dictates discussed by the Court of Appeal in the Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others case [supra] since its role to primarily give effect to a constitutionally-guaranteed human right to privacy.

33. Next is a consideration of the second sub-issue which will also entail a discussion on whether the Commissioner decided to conduct investigations on the complaint. The record has it that the Commissioner served the Appellant on two occasions with the Notification of Complaint. The first one was dated 27th October 2022 and the subsequent one was dated 11th November 2022. In both notifications, the Commissioner enclosed the 2nd Respondent's Complaint Form and the annexures

to it. Although the Appellant protested that it was not served with the notifications, the evidence on record affirms proper service. I say so because a perusal of the two Notifications of Complaint shows that the documents were received by one Jackie Kinyua on 28th October 2022 and on 11th November 2022 respectively. The Enforcement Letter was stamped and signed by the same Jackie Kinyua on 17th February 2023 whereas the Penalty Notice was signed received by the same person on 11th April 2023. In all the receipt acknowledgments, Jackie Kinyua indicated that she was doing so on behalf of the Appellant as its employee.

34. There is also an Affidavit of service deposed to by one Dennis Ambaisi Nyangule on 11th November 2022 evidencing service of the Notification of Complaint, the reminder and Penalty Notice which accorded to Order 5 Rule 15 of the Civil Procedure Rules. It is noteworthy that the Appellant does not deny that Jackie Kinyua, the person who received and stamped the documents, was its employee. It is on that background that this Court finds and holds that the Appellant was properly served with the requisite documents, but decided not to act until when it was served with the Penalty Notice.

35. In this case, therefore, the Commissioner reviewed the complaint on receipt and admitted it. The Commissioner then decided to effect service of the complaint upon the Appellant such that on receipt of its response it would decide on whether to conduct an inquiry into the complaint; conduct investigations, facilitate mediation, conciliation or negotiation in accordance with the Act and the Regulations or to use any other mechanisms to resolve the complaint. The Commissioner's intentions were, however, curtailed by the unresponsiveness on the Appellant's part.

36. In view of the Appellant's conduct and acting on Section 58(1) of the Act, the Commissioner issued an Enforcement Notice to the Appellant. The provision states as follows: -

58.

(1) Where the Data Commissioner is satisfied that a person has failed, or is failing, to comply with any provision of this Act, the Data Commissioner may serve an enforcement notice on that person requiring that person to take such steps and within such period as may be specified in the notice.

37. Sub-section [2] provides the contents of the Enforcement Notice as under: -

An enforcement notice served under subsection (1) shall—

(a) specify the provision of this Act which has been, is being or is likely to be, contravened;

(b) specify the measures that shall be taken to remedy or eliminate the situation which makes it likely that a contravention will arise;

(c) specify a period which shall not be less than twenty-one days within which those measures shall be implemented; and

(d) state any right of appeal.

38. Again, the Appellant failed and/or ignored to heed to the Enforcement Notice and that is when the Penalty Notice was issued. Therefore, as a result of the Appellant's failure to participate in the matter, the Commissioner cannot be said to have conducted investigations. It was the Appellant who denied the Commissioner the option of settling for investigations when it declined to respond to the complaint. As such, sensing defiance and given that the complaint was then not opposed, the Commissioner proceeded to issue the Enforcement Notice and the Penalty Notice relying on Regulation 6[4][d].

39. As I come to the end of the discussion on this issue, it is imperative to also deal with the Appellant's contention that its review application was improperly rejected. The application was premised on the grounds which have already been discussed above. The Enforcement Notice contained the timeline within which the Appellant was required to remedy the violation. Since the Notice was served on 17th February 2023, then the 30-day period provided for in paragraph D, elapsed on 18th March 2023. The Appellant sought for review on 26th April 2023, a period that was outside the statutory period. As this Court has already found that the Appellant was properly served and failed to participate in the proceedings coupled with the fact that even the review application was filed outside the timelines, the Commissioner did not err in declining the review application.

40. Deriving from the foregoing, this Court now finds and hold that the Enforcement and Penalty Notices were properly issued in law and that the Appellant's review application was rightly rejected. All the Appellant's contentions on the above issues are, hence, for rejection.

The propriety of the penalty of Kshs. 5,000,000/-:

41. Section 9(1)(f) of the Act empowers the Commissioner to impose administrative fines for failures to comply with the Act. Section 62(2) sets the principles the Commissioner considers while administering penalties. It provides as follows: -

> (2) In deciding whether to give a penalty notice to a person and determining the amount of the penalty, the Data Commissioner shall, so far as relevant, have regard —
>
> (a) to the nature, gravity and duration of the failure;
>
> (b) to the intentional or negligent character of the failure;
>
> (c) to any action taken by the data controller or data processor to mitigate the damage or distress suffered by data subjects;
>
> (d) to the degree of responsibility of the data controller or data processor, taking into account technical and organisational measures;
>
> (e) to any relevant previous failures by the data controller or data processor; to the degree of co-operation with the Data Commissioner, in order to remedy the failure and mitigate the possible adverse effects of the failure;
>
> (g) to the categories of personal data affected by the failure;
>
> (h) to the manner in which the infringement became known to the Data Commissioner, including whether, and if so to what extent, the data controller or data processor notified the Data Commissioner of the failure;
>
> (i) to the extent to which the data controller or data processor has complied with previous enforcement notices or penalty notices;
>
> (j) to adherence to approved codes of conduct or certification mechanisms;
>
> (k) to any other aggravating or mitigating factor applicable to the case, including financial benefits gained, or losses avoided, as a result of the failure (whether directly or indirectly);
>
> (l) to whether the penalty would be effective, proportionate and dissuasive.

42. Section 9[1][f] of the Act gives power to the Commissioner to issue administrative fines for failures to comply with the Act. Regulation 21 provides for the enforcement of a Penalty Notice. Section 63 of the Act limits the power of the Commissioner by setting a maximum penalty of the administrative fines of up to Kshs. 5,000,000/=. However, this provision has to contrasted with Sections 57[3], 58[3] and 61[d] of the Act which creates criminal offences with their requisite sentences on conviction. The administrative fines are also to be distinguished from compensation to a data subject under Section 65 of the Act. As said, the purpose of the administrative fines is to punish for failure to comply with the Act.

43. The Commissioner was, therefore, within the law in imposing the administrative fine. What is at stake is whether the fine was fair and reasonable in the circumstances. Borrowing from criminal practise, the Court in Wanjema v. Republic (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.

44. In this case, the Commissioner in its Penalty Notice laid a basis for the penalty. That was in paragraph 2 thereof where it enumerated the extent of the Appellant's neglect and refusal to comply with the law in detail. Unless deliberate effort is undertaken, this country will live way below the expectations of the people of Kenya as contained in the solemn document; *the Constitution*. One way of ensuring compliance and respect to *the Constitution* is for those who impugn *the Constitution* pay damages as the case may be. The case at hand is a clear demonstration of an entity which decided to stand on the way of the Commissioner seeking to discharge its constitutional mandate. I say so because behind the Commissioner and the Appellant was a party who was allegedly aggrieved by a continuous derogation of his right to privacy. Therefore, a decision was to be reached on the complaint and that was curtailed by the Appellant's conduct. To this Court, in order to drive home the need to abide by *the Constitution* and to heed the calling in Articles 3 and 10 thereof, ideally the penalty in place ought not to be disturbed. However, given that the Appellant was a first offender, this Court finds that imposing the maximum penalty was harsh and excessive. The parties will now meet midway as the sentence is reviewed to Kshs. 2,500,000/= [Kenya Shillings Two Million and Five Hundred Thousand Only].

Disposition:

45. Having considered the grounds of appeal above, this Court now makes the following final orders: -

    (a) With an exception of the penalty imposed, the rest of the appeal is hereby dismissed.

    (b) The penalty of Kshs. 5,000,000/= imposed by the Data Commissioner vide the Penalty Notice dated 11th April 2023 is hereby reviewed to Kshs. 2,500,000/= [Kenya Shillings Two Million and Five Hundred Thousand Only].

    (c) The penalty sum shall be paid within the next 30 days of this judgment and in default execution shall issue.

    (d) The Appellant will bear the costs of the appeal.

    Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment delivered virtually and in the presence of:

Mr. Ndungo, Learned Counsel for 2nd Respondent.

Ms Beth, Learned Counsel for Appellant.

Mr. Odhiambo, Learned Counsel for 1st Respondent.

Michael/Amina – Court Assistants.