



**Wangari & another v Whitepath Company Limited (Miscellaneous Civil Application E546 of 2025) [2025] KEHC 16419 (KLR) (Civ) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16419 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E546 OF 2025  
SN MUTUKU, J  
NOVEMBER 14, 2025**

**BETWEEN**

**IVY MUNYIVA WANGARI ..... 1<sup>ST</sup> APPLICANT**

**ESTHER MUTHONI WANJIRU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**WHITEPATH COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. Ivy Munyiva Wangari (the 1<sup>st</sup> Applicant) and Esther Muthoni Wanjiru (the 2<sup>nd</sup> Applicant) filed a Complaints with the Office of the Data Protection Commission (ODPC) on 7<sup>th</sup> August 2024 and 15<sup>th</sup> August 2024, respectively, against Whitepath Company limited, the Respondent. They based their Complaints on Section 56 of the Data Protection Act and Regulation 4 of the Enforcement Regulations.
2. The ODPC notified the Respondent of the Complaints against it through letters dated 16<sup>th</sup> August 2024 and 17<sup>th</sup> September 2024. The Respondent replied to the complaints.
3. Upon determination, the Respondent was found liable and a compensation award amounting to Kshs 200,000 was made for the benefit of the 2<sup>nd</sup> Applicant.

**Notice of Motion**

4. The Notice of Motion, the Application, is dated 8<sup>th</sup> April 2025. It is based on various provisions of the law as clearly stated on the face of it. It seeks orders as follows:
  - i. That this Honourable Court be pleased to adopt the Determination of the Data Protection Commissions made on 4<sup>th</sup> November 2024 as the Judgment of this Court.



- ii. That a decree do issue for the sum of Kshs 200,000 being the Data Protection Commissioner's compensation award to the Applicant made on 4<sup>th</sup> November 2024, and interest thereon at Court rates from that date until payment in full.
  - iii. Costs of this Application.
5. The grounds in support of the application are found on the face of the application and in the Supporting Affidavit of the 2<sup>nd</sup> Applicant.
  6. In sum, the 2<sup>nd</sup> Applicant filed the Complaint with the ODPC following incessant telephone calls and messages from the Respondent demanding payment from her as a loan guarantor over a loan she was said to have guaranteed when she had not guaranteed any loan. The Complaint was received and acknowledged by the ODPC who proceeded to notify the Respondent and asked him to prove a response. The Respondent filed a response in which it admitted that its employees had contacted the 2<sup>nd</sup> Applicant.
  7. The ODPC determined the Complaint under Regulation 11(2) of the Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021. The Respondent was found liable and was notified of the outcome of the determination and a demand notice was served on it. The Respondent, however, did not settle the award.
  8. The Application was served on the Respondent who failed to turn up in court to defend its case. The Application was canvassed by way of submissions. I have read the submissions by the Applicant dated 16<sup>th</sup> June 2025. He has raised two issues: (a) whether the 2<sup>nd</sup> Applicant is entitled to the orders sought and (b) who should pay the costs of the application and the suit.
  9. On the first issue, it was submitted that the Data Protection Act does not provided procedure for enforcement of the compensation awards from the ODPC and that where a lacuna like this one exists in the enforcement of an award, the Court is the only recourse. It was submitted that this court is clothed with jurisdiction under Article 165 (3) of *the Constitution* on civil matters and inherent powers to adopt as its judgment the Data Protection Commissioner's compensation awards for purposes of execution,
  10. The Applicant relied on *Selina Vukinu Ambe v Ketan Shashikant Khatri* [2020] eKLR where the court stated that:
    - “ 17. With reference to the matters at hand, this means that the High Court is constitutionally mandated to hear and determine all civil suits irrespective of their nature or the value of the subject matter. The High Court's jurisdiction being a creature of *the Constitution* which is the Supreme Law of the land cannot be limited or fettered by any other written law..[...]. In my view, any statute that would purport to limit the High Court's jurisdiction as conferred by Article 165(3) would to that extent be unconstitutional by virtue of Article 2(4) of *the Constitution*”
  11. It was submitted that the instant application is confined to matters of enforcement only and therefore it meets the principles required in enforcement of awards where the law is silent. The 2<sup>nd</sup> Applicant relied on *Joash Shisia Cheto v Thepot Patrick Charles* [2022] eKLR where the court, after considering various authorities, stated thus:
    - “ 51. The general position established by a majority of these decisions is as follows:



- a. The law does not provide for mechanisms of enforcing the Director’s award against a reluctant employer.
- b. In the face of this lacuna, the holder of the award can move the court to seek for enforcement of the award. A majority of the decisions favour the view that the ELRC can be moved for this purpose pursuant to its jurisdiction under article 162 of *the Constitution* as read with section 12 of the ELRC Act. Only one decision holds the view that the ELRC cannot be moved for this purpose. A few share the view that the Magistrate’s court may be moved where pecuniary jurisdiction allows.
- c. The proceedings for enforcement may be in summary form by way of miscellaneous causes or in the form of ordinary causes but confined to matters of enforcement only.
- d. ....”

12. On the issue of costs, the 2<sup>nd</sup> Applicant has submitted that costs follow the event and relied on *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR where the court stated that:

“.....the award of costs would normally be guided by the principle that, ‘costs follow the event’ the effect being that the party who calls forth the event by instituting a suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs.”

13. The Applicant urged that this court awards him the costs of this application.

**Determination**

14. I have considered this application. It is not opposed by virtue of the failure by the Respondent to file any response or to attend court to argue its case. There is evidence that the Respondent was served with the Application and was notified of the date reserved for the hearing of the application but there was no attendance.

15. The 1<sup>st</sup> Applicant has not provided material to this court to support her case and it is not clear why she is before this court.

16. In respect to the 2<sup>nd</sup> Applicant, I have considered the application and the supporting affidavit. I have considered the arguments by the 2<sup>nd</sup> Applicant through the submissions. I agree with the 2<sup>nd</sup> Applicant that this court is seized with the jurisdiction to determine this application. I am persuaded that the Application is merited and hereby allow the same. However, I note that the 2<sup>nd</sup> Applicant did not raise the issue of payment of costs the suit in his application. He has raised it in the submissions and therefore I will only grant costs for the application.

17. Consequently, I issue the following orders:

- i. This Court hereby adopts the Determination of the Data Protection Commissioner made on 21<sup>st</sup> February 2025 as the Judgment of this Court.
- ii. A decree shall issue for Kshs 200,000 being the Data Protection Commissioner’s compensation award to the Applicant made on 21<sup>st</sup> February 2025 and interest thereon at court rates from 22<sup>nd</sup> February 2025 until payment in full.



iii. Costs of the application shall be paid to the Applicant by the Respondent.

18. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 14<sup>TH</sup> OCTOBER 2025.**

**S. N. MUTUKU**

**JUDGE**

