



REPUBLIC OF KENYA



**Irungu v Lintons Academy (Commercial Miscellaneous Application E205 of 2025)
[2026] KEHC 570 (KLR) (Commercial and Tax) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E205 OF 2025**

**MN MWANGI, J
JANUARY 23, 2026**

BETWEEN

ANN WANJIRU IRUNGU APPLICANT

AND

LINTONS ACADEMY RESPONDENT

RULING

1. The application before me is a Chamber Summons dated 29th January 2025 filed by the applicant pursuant to the provisions of Section 65 of the *Data Protection Act, 2019*, Rule 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, Section 28 of the *Civil Procedure Act*, and all other enabling provisions of the law. The applicant seeks orders for the adoption and enforcement of the Data Commissioner's Award dated 28th March 2024, as a decree of the Court and for leave to enforce the said Award as a decree of the Court.
2. The application is premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Ms Ann Wanjiru Irungu, the applicant herein. Ms Irungu averred that the respondent used her image on social media without her consent. That despite requesting the respondent to cease from using her image, the respondent ignored the request, prompting her to lodge a complaint with the Office of the Data Protection Commissioner (ODPC) on 2nd January 2024, pursuant to the provisions of Section 56 of the *Data Protection Act, 2019* and Regulation 4 of the Enforcement Regulations. She further averred that the matter was heard, and both parties were given an opportunity to present their cases, resulting in the Data Commissioner awarding her Kshs.750,000/= as per the determination dated 28th March 2024.
3. Ms Irungu deposed that the respondent filed an Appeal on 26th April 2024 but has not prosecuted it, and there is no stay of execution of the Award. She claimed that despite demands, the respondent



has failed to honour the Award without any justifiable reason. She stated that unless the application herein is heard urgently, her legal rights will be denied. She averred that this Court has the jurisdiction to enforce the Award as a decree under Regulation 14(5)(b) of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, noting that the application herein was made without any undue delay and that the Award is clear, enforceable and warrants urgent certification in the interest of justice and fairness.

4. In opposition to the application, the respondent filed a replying affidavit sworn on 14th March 2025 by Dr. Joyce Gikunda. She acknowledged that the applicant lodged a complaint with the Data Commissioner, which resulted in a determination dated 28th March 2024. She stated that dissatisfied with the determination, she filed an Appeal in the High Court on 29th April 2024, being HCCA No. E551 of 2024: Lintons Academy v Ann Wanjiru Irungu, which is currently pending. She contended that contrary to the applicant's assertion, she has been actively prosecuting the Appeal. Dr. Gikunda asserted that the respondent's Appeal is arguable and that granting the orders being sought herein would undermine her rights, including ownership rights protected under *the Constitution* of Kenya, 2010.
5. The instant application was canvassed by way of written submissions. The applicant's submissions were filed by the law firm of Robson Harris Advocates LLP on 8th April 2025, whereas the respondent's submissions were filed on 21st May 2025, by the law firm of Mulondo & Company Advocates LLP.
6. Ms Odongo, learned Counsel for the applicant submitted that under Section 65(1) of the Data Protection Act, a person who suffers damage due to a contravention of the Act is entitled to compensation from the Data Controller or Processor. She stated that Rule 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, Legal Notice 264 of 2021, provides remedies including enforcement notices, administrative fines, dismissal of complaints lacking merit, recommendations for prosecution, or orders for compensation. She submitted that sub-section (5) of Regulation 14 on the other hand provides that the Data Commissioner's decisions are binding and enforceable as Court orders. Counsel stated that the Office of the Data Commissioner issued an Award in favour of the applicant on 28th March 2024 for Kshs.750,000/=, with no order for stay of execution in place.
7. Ms Odhiambo, learned Counsel for the respondent submitted that the respondent was dissatisfied with the Data Commissioner's Award dated 28th March 2024 and filed an Appeal under Sections 58(2)(d) & 64 of the Data Protection Act, which allows a person aggrieved by administrative actions of the Data Commissioner to appeal to the High Court. She cited the case of Ndirangu v Nation Media Group Limited & another (Civil Case E149 of 2020) [2024] KEHC 6981 (KLR) and argued that granting the orders being sought herein would render the said Appeal futile and undermine the respondent's statutory right to appeal.

Analysis And Determination.

8. Upon consideration of the application filed herein, the grounds on the face of it, and the affidavit filed in support thereof, the replying affidavit by the respondent and the written submissions by Counsel for the parties, the issue that arises for determination is whether the Data Commissioner's Award should be adopted and enforced as a decree of the Court.
9. It is not disputed that the Office of the Data Protection Commissioner determined the dispute between the parties herein and made an Award dated 28th March 2024, directing the respondent to pay the applicant Kshs.750,000/=. The binding nature of this determination is expressly provided



for in Regulation 14(5) of the Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021, which states that–

The decision of the Data Commissioner made under these Regulations shall be -

- a. binding on the parties; and
- b. shall be enforced as an order of the Court

10. It is manifest from the pleadings filed that the Award made has not been set aside, varied, or reviewed by any Court of competent jurisdiction. Most importantly, there is no order for stay of execution issued against the said Award as contemplated under Order 42 Rule 6 of the Civil Procedure Rules, 2010, which provides that –
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside
 2.
11. The import of the above provisions is that an Appeal, whether first or second, does not automatically operate as a stay of execution unless specifically ordered by the Court. Any stay of execution requires a separate application, but in this instance, no such order has either been sought or granted. This Court is of the considered view that even though the respondent has lodged an Appeal against the Data Commissioner’s Award, the mere filing of an Appeal does not suspend the operation or enforceability of the Award. For this reason, this Court is persuaded that allowing enforcement of the Data Commissioner’s Award does not prejudice the respondent’s right to prosecute its Appeal on its merits. The respondent can still challenge the Award in the appellate proceedings, but this cannot and should not delay the applicant from realizing the fruits of her Award.
12. The applicant’s right to compensation under Section 65(1) of the *Data Protection Act, 2019*, is a statutory right. I therefore hold that the Award of Kshs.750,000/= represents a tangible remedy for harm suffered by the applicant due to the respondent’s unlawful use of her image. As such, denying enforcement of the Award while the Appeal is pending in the absence of an order for stay of execution would amount to an unjust deprivation of the applicant’s legal rights and contravene the principle that statutory awards are to be implemented promptly and effectively.
13. In the circumstances, this Court finds that granting the orders being sought herein preserves the applicant’s legal rights and does not prejudice the respondent’s right to pursue its Appeal. Any contention that the enforcement of the Data Commissioner’s Award would infringe upon the respondent’s constitutional rights is unfounded, as the enforcement merely implements a lawful statutory Award and does not bar the respondent from prosecuting its Appeal. In view of the analysis made, this Court finds that there is no legal impediment to this Court recognizing and enforcing the Data Commissioner’s Award dated 28th March 2024 as a decree of the Court.
14. In the premise, this Court finds that the application dated 29th January 2025 is merited. As a result, it is hereby allowed in the following terms–



- i. I hereby adopt the Data Commissioner's Award dated 28th March 2024 as a decree of the Court;
- ii. Leave is hereby granted to the applicant to enforce the said Award as a decree of the Court; and
- iii. Each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF JANUARY 2026.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Odongo for the applicant

Ms Odhiambo for the respondent

Ms B. Wokabi – Court Assistant.

