

Protection Commissioner dated 17th July 2025 in Complaint No. 0590 of 2025: Dennis Mbogoro Muthoni vs. Africa International University as an order of this Court for enforcement.

(iii) THAT Judgment be entered for the Applicant against the Respondent for the sum of Kshs. 250,000/-.

(iv) THAT a decree be and is hereby issued for the sum of Kshs. 250,000/-.

(v) THAT the costs of this Application be provided for.

2. The Applicant has advanced grounds in support of the Applicant in the body of the Application and in the Supporting Affidavit sworn by the Applicant, that on 17th July 2025, the Office of **the Data Protection Commissioner** (the Interested Party) made a Determination in ***Complaint No. 0590 of 2025 - Dennis Mbogoro Muthoni v Africa International University*** (the Complaint) in which **Africa International University** (the Respondent) was directed to pay the Applicant a sum of Kshs. 250,000/- for unlawful use of his image in its

publications; that sometime thereafter, the Respondent served him with a memorandum of appeal dated 15th August 2025 filed in Nairobi HCCA No. E851 of 2025, seeking to invalidate the Determination mentioned hereinabove and that no stay of execution was ever granted and therefore he is entitled to the prayers sought.

The Preliminary Objection

3. The Respondent has opposed the Application through a notice of Preliminary Objection dated 17th September 2025 in which the Respondent has challenged the competency of the Application by raising the following grounds:

(i) THAT this Court lacks the jurisdiction to grant the prayers sought in the Notice of Motion application dated 1st September 2025 as there is no provision of the law which allows this Court to enforce the compensatory awards of the Office of the Data Protection Commissioner.

(ii) THAT the Data Protection Act, Cap. 411C, Laws of Kenya, under Section 64, provides only for the Court to deal with appeals arising out of the award of the Data Commissioner and therefore this Court can only enforce awards arising from such appeals.

(iii) THAT given that the Respondent has preferred an appeal against the impugned decision, this Court will eventually embarrass itself through conflicting decisions as the Court cannot adopt the Data Commissioner's determination as its own judgement and then proceed to sit as appellate court on the same determination.

(iv) THAT the application is bad in law, frivolous, vexatious, misconceived and an abuse of court process thus it should be dismissed with costs.” sic

Parties' submissions

4. The Application was canvassed by way of written submissions. The Applicant's submissions are dated 10th November 2025. In respect to the PO, the Applicant has submitted that this court has unlimited original jurisdiction in civil matters provided under Article 165(3)(a) of the Constitution and that the High Court has supervisory jurisdiction over subordinate courts and other quasi-judicial bodies, under Article 165(6) and (7) of the Constitution and Section 5 of the Data Protection Act.

5. The Applicant has argued that the Data Protection Act does not expressly provide for the execution of monetary awards

and decrees and that such awards can only be enforced under the Civil Procedure Rules (CPR) and therefore this Application is competently before the High Court.

6. In respect of the Application, the Applicant has submitted that both the Data Protection Act and its Complaints Handling Procedure and Enforcement Regulations 2021 confer upon the Interested Party the power to investigate, determine and issue enforcement notices. That however, such power does not extend to the execution of money decrees, hence the instant Application; that while the Respondent has filed an appeal challenging the Determination made by the Interested Party, according to the decision rendered in **Ambundo v Ambundo; Ambundo (Interested Party) [2025] KEHC 3303 (KLR)**, the law is clear that an appeal does not operate as an automatic stay of execution; that in order for a party to be entitled to a stay of execution, he or she must satisfy the conditions set out under Order 42, Rule 6(2) of the CPR and that the Respondent herein has not demonstrated the substantial loss it stands to suffer in the absence of a stay order. The Applicant cited the case of **James Wangalwa &**

Another v Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR) on the principle of substantial loss.

7. The Applicant submitted, further, that execution is a lawful process and that in the absence of any order for stay, he ought to be allowed to enjoy the fruits of the Determination, which remains valid and enforceable.
8. The Applicant has urged this court to dismiss the PO with costs and allow the Application.
9. The Respondent filed its submissions dated 24th November 2025. The Respondent relied on **Mukisa Biscuit Company v West End Distributors Limited (1969) EA 696** on what constitutes a PO and submitted that the PO is challenging this court's jurisdiction to handle this Application.
10. The Respondent contended that while Article 165(3) and (6) of the Constitution establish the unlimited original jurisdiction of the High Court in civil and criminal matters as well as its supervisory jurisdiction, no specific legal provision exists bestowing jurisdiction upon the High Court to grant the prayers sought in the instant Application; that in the case of **Samuel Kamau Macharia & another v**

Kenya Commercial Bank Ltd & 2 others
[2012] KESC 8 (KLR), the Supreme Court pronounced that jurisdiction of a court flows either from the Constitution or legislation or both; that this court's jurisdiction, as pertains to decisions rendered by the Interested Party, is limited to the hearing and determination of appeals arising therefrom and that such jurisdiction does not apply in a supervisory sense as purported by the Applicant. The Respondent referred to **Boniface Muli v Hannington Musyoki [2012] KEHC 1492 (KLR)** where it was held that the supervisory jurisdiction of the High Court is purely intended to ensure that the subordinate courts are performing their duties in the proper manner.

11. The Respondent argued that it has preferred an appeal against the Determination made by the Interested Party, which appeal is currently pending before the High Court; that in the circumstances, the Application is prematurely before this court and that it would be improper for the same to be allowed, in view of the pending appeal and that whether there is an existing order for stay of execution in

place is of no consequence, since the Application seeks to adopt the Determination by the Interested Party, as an order of the court.

12. The Respondent has urged this court to dismiss the Application with costs, as prayed in the PO.

13. As the record stands, the Interested Party neither entered appearance nor participated in these proceedings.

Analysis and Determination

14. I have carefully considered the instant Application and the grounds supporting it, the PO and the rival submissions as well as the authorities cited.

15. In my considered view, the determination of the PO will dictate whether the Application before the court should be considered or not, for finding in favour of the PO will automatically dispose of the Application.

16. The beginning point is whether the instant PO must meet the threshold set in **Mukisa Biscuit Company v West End Distributors Limited (1969) EA 696** and **Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others [2015] eKLR**, that a PO *raises a pure point of law which is argued on the*

assumption that all the facts pleaded by the other side are correct and that it cannot be raised in any fact that has to be ascertained or if what is sought is the exercise of judicial discretion.

17. The instant PO majorly challenges the jurisdiction of this court to entertain the Application. I am alive to the legal principle that a court without jurisdiction cannot proceed further with the matter before it. I am also alert to the fact that jurisdiction of a court flows from the constitution or from a statute or from both the constitution and the statute. That position has been pronounced by various courts including the Court of Appeal in **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR** where it was stated that:

“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is

dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. In another locus classicus in this subject, this Court pronounced; Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. (1989):

"Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

18. The above legal position was affirmed by the Supreme Court in **Macharia & another v Kenya Commercial Bank Limited & 2 others** [2012] KESC 8 (KLR) in the following manner:

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law could only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which was conferred upon it by law. The issue as to whether a court of law had jurisdiction to entertain a matter before it, was not one of mere procedural technicality; it went to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.”

19. My considered view on this issue is that the issue of jurisdiction, where it is challenged, meets the threshold set out in **Mukisa Biscuits case** where it was stated by Law, JA, that:

“.....So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitations, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.....”

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34. rise to the suit to refer the dispute to arbitration.
35. Having settled that issue, my duty is to consider and determine whether the Respondent has demonstrated that this court lacks jurisdiction to determine the instant Application.
36. I have considered the Respondent's contention that there is no existing legal provision that allows this court to adopt and enforce the decisions rendered by the Interested Party. The Respondent has contended that **Sections 64 and 65** of

the **Data Protection Act, Cap. 411C Laws of Kenya**, are inapplicable to the present circumstances.

37. **Section 64** (supra) provides that:

“A person against whom any administrative action is taken by the Data Commissioner, including in enforcement and penalty notices, may appeal to the High Court.”

38. **Section 65** generally provides that any person who suffers damage as a result of a contravention under the aforesaid Act is entitled to compensation. The two provisions do not provide the manner in which the decisions of the Commissioner are to be enforced.

39. I have read **Regulation 14** of the **Data Protection (Complaints Handling Procedure and Enforcement) Regulations (Legal Notice 264 of 2021)** which, though not cited by the parties, is relevant to these proceedings. Of particular relevance is **Sub-regulation 5** which provides that:

“(5) 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.”

40. The Data Protection Act and its Regulations, as I have observed, does not define the ‘**Court**’ referred to therein, although a provision is made for the ‘**High Court**’ in regard to hearing the appeals arising from decisions generally made by the Interested Party.

41. It is evident that the Legislature did not provide the manner in which the decision of the Data Commissioner would be enforced. From my reading of the Data Protection Act, it is clear that the Act does not cloth with the Data Commissioner or any other authority under the Act with powers to enforce the decisions emanating from that office. This leads me to invoke the unlimited original jurisdiction of the High Court to handle civil and criminal matters, under **Article 165(3)(a)** of the **Constitution**. I find no error in stating that this jurisdiction would be properly invoked to extend to the enforcement of decisions made by the Office of the Interested Party pursuant to **Regulation 14(5)(b)**. For that reason, it is my finding that the instant application is competently before this court. Consequently, **Grounds (1) and (2)** of the PO cannot stand.

42. The second limb of the Respondent's PO is contained in **Ground (3)**. The Respondent is challenging the competency of the instant application on the grounds that it is premature, in view of the pending appeal before the High Court.

43. I have considered this issue. I am of the view that the above ground does not raise pure points of law and cannot therefore be regarded as a PO and therefore **Ground (3)** of the PO is unsustainable.

44. That notwithstanding, it is my view that there is no dispute that the Respondent has filed an appeal seeking to challenge the Determination, namely, **Nairobi HCCA No. E851 of 2025**. That appeal is still pending determination.

45. In the circumstances, I agree with the Respondent, that given the appeal lies against the Determination made by the Interested Party and is still pending determination by the High Court, it would be premature to consider the merits of the instant application at this stage for the reasons that the prayers sought in the instant application relate to the enforcement of the Determination.

46. Consequently, I make the following orders:

a) That the PO dated 17/09/2025 be and is hereby dismissed.

b) That the Notice of Motion dated 1/09/2025 be and is hereby held in abeyance pending the determination of Nairobi High Court Civil Appeal No. E851 of 2025 involving the Applicant and the Respondent herein.

c) That costs shall follow the event.

47. Orders shall issue accordingly.

Dated, signed and delivered this 16th day of February 2026.

**S. N. MUTUKU
JUDGE**

In the presence of:

1. Mr. Odhiambo for the Applicant
2. Mr. Waita for the Respondent