



OFFICE OF THE DATA PROTECTION COMMISSIONER
ODPC COMPLAINT NO. 1335 OF 2023

PHYLLIS NYABOKE..... COMPLAINANT

-VERSUS-

GROLA TECH LIMITED T/A LION CASH.....RESPONDENT

DETERMINATION

(Pursuant to Section 8 (1) (f) and 56 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021)

A. INTRODUCTION

1. The Constitution of Kenya 2010, under Article 31 recognizes the right to privacy. Consequently, in an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter as "the Act") was enacted.
2. The Office of the Data Protection Commissioner (hereinafter as "the Office") was established pursuant to Section 5 of the Act and is mandated with the responsibility of regulating the processing of personal data; ensuring that the processing of personal data of a data subject is guided by the principles set out in Section 25 of the Act; protecting the privacy of individuals; establishing the legal and institutional mechanism to protect personal data and providing data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.

3. Section 8 (1) (f) of the Act provides that the Office can receive and investigate any complaint by any person on infringements of the rights under the Act. Furthermore, Section 56 (1) provides that a data subject who is aggrieved by a decision of any person under the Act may lodge a complaint with the Data Commissioner in accordance with the Act.
4. It is on that basis that the Office received a complaint from Phylis Nyaboke (hereinafter as "the Complainant") dated 27th July, 2023 and against Grola Tech Limited T/A Lion Cash (hereinafter as "the Respondent").
5. The Respondent is a company that provides digital loans in Kenya while the Complainant is an aggrieved data subject.
6. The Office in exercise of its mandate as envisaged under the Act and in the promotion of justice, notified the Respondent of the complaint filed against it *via* a letter dated 1st August, 2023. In the notification of the complaint filed against the Respondent, the Respondent was to provide: -
 - a) A response to the allegations made against it by the Complainant;
 - b) Any relevant materials or evidence in support of its representation above;
 - c) The standard contract that it had with the Complainant;
 - d) The legal basis relied upon to process and engage with the Complainant and whether or how it fulfils the duty to notify under Section 29 of the Data Protection Act, 2019; and
 - e) Details of all the product names/mobile money lending applications that it runs.
7. On 16th August, 2023, the Respondent filed its response to the complaint via a letter dated 14th August, 2023.

8. Upon receipt of the aforementioned letters and documents, investigations were conducted as required by Regulation 13 (1) of the Data Protection (Complaint Handling Procedure and Enforcement) Regulations, 2021.
9. This determination is premised on the provisions of Regulation 14 of the Data Protection (Complaint Handling Procedure and Enforcement) Regulations, 2021 which states that the Data Commissioner shall, upon conclusion of the investigations, make a determination based on the findings of the investigations.

B. NATURE OF THE COMPLAINT

10. The Complainant alleged that she received threatening calls and messages from the Respondent, telling her to contact a loanee known to her and ask him to pay a loan owed to the Respondent. She further states that she was enlisted as a referee despite not giving her consent.

ANALYSIS OF EVIDENCE ADDUCED

I. EVIDENCE ADDUCED BY THE COMPLAINANT

11. The Complainant lodged a complaint to this Office *via* email alleging that she received threatening calls and messages regarding a loan that she hadn't consented to be enlisted as a referee. She availed screenshots of messages received from the Respondent as well as screenshots of her call log as evidence of having received messages and calls from the Respondent.

II. EVIDENCE ADDUCED BY THE RESPONDENT

12. The Respondent *via* a letter dated 14th August, 2023 responded to our notification of complaint letter.
13. In the said letter, the Respondent stated that: -
 - i. It does not condone any form of harassment against its clients and that it has various mechanisms in place for discouraging and punishing such conduct amongst its staff members.

- ii. It has outsourced a company to remind its customers of loan repayments by sending them reminder messages on their registered mobile phone numbers and that only customers who have defaulted on their repayments are sent the messages.
- iii. Contrary to complaints made, obtaining access to a customer's phonebook requires the consent of the customer, and even then, only for the purposes of contacting the customer's referees and with the customer's consent. It further stated that phonebook information is not provided to loan recovery agents for the purpose of contacting clients.
- iv. It also stated that there were instances in the past when some of its recovery agents would get overly enthusiastic while executing their duties of debt recovery but they were trained on the minimum acceptable conduct of handling clients and on the importance of the Data Protection Act and the rights of the data subjects as outlined therein. In addition, it has since then continued to strongly discourage any form of misconduct, harassment and/or abuse of clients or any other third parties.
- v. It has committed to undertake investigations into complaints advanced regarding Lioncash and also revise the terms of its agreement with the outsourced company.
- vi. It stated that its terms and conditions are evidence that it doesn't have access to its client's phonebook save for the referee whose phone number the client themselves provide and that it doesn't have access to any other person's contact information.
- vii. It further stated it only reaches out to referees listed at the point of onboarding of customers and only for the purpose of sending reminder messages to clients who have failed to make loan repayments.
- viii. Additionally, it stated that it had noted the inadequacies in its referee onboarding process as far as the safeguarding of their data is concerned and specifically, their right to be notified and it is currently in the process of creating a mechanism for persons being listed as referees to consent to being listed as such in a bid to meet the notification duty. This is to

ensure that referees are only persons who are aware of the client's loan and have consented to being listed as the client's referee.

ix. It stated that it only runs two products namely; Lcash and Lioncash.

14. The Respondent provided a copy of its privacy policy and its terms of service.

C. ISSUES FOR DETERMINATION

- i. Whether the Respondent obtained prior consent from the Complainant before enlisting her as a referee of a loanee.
- ii. Whether the Respondent fulfilled its duty to notify under Section 29 of the Act.
- iii. Whether there was any infringement of the Complainants' Rights as data subjects as provided for in the Data Protection Act, 2019.

I. WHETHER THE RESPONDENT OBTAINED PRIOR CONSENT FROM THE COMPLAINANT BEFORE ENLISTING HER AS A REFEREE OF A LOANEE

15. Section 2 of the Act defines "**consent**" as *any manifestation of express, unequivocal, free, specific and informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject.*

16. In addition, Section 30 of the Act provides that a data controller or data processor shall not process personal data unless the data subject consents to the processing for one or more specified purposes.

17. The Complainant adduced screenshots of messages sent to her by the Respondent requesting her to inform a loanee, to clear their loan owed to the Respondent. The Complainant also availed screenshots of her call log which showed that the Respondent had called her severally with the same mobile number that was used to send her the aforementioned text messages.



18. The burden of proof to demonstrate consent lies with the Respondent. The Respondent in its response admitted to having obtained the contacts in its clients' phonebooks but with the consent of the customer, and that it only contacts the referee when the client fails to make loan repayments. The Respondent did not provide any evidence of seeking prior consent from the Complainant before enlisting her as a referee to a loan she had no knowledge about. The Respondent instead sought consent from the loanee and not from the Complainant directly. The Respondent also did not deny that it called and sent text messages to Complainant telling her to request a loanee to repay a loan advanced to him by the Respondent.

19. In view of the above, it is evident that the Respondent obtained the Complainant's contact from its client and not from the Complainant directly and used it to make unwarranted calls and messages regarding a loan she had not consented to be enlisted as a referee.

20. I therefore find that the Respondent did not obtain prior consent from the Complainant before enlisting her as a referee. The Respondent did not have a mechanism whereby the proposed referee can have the liberty to decide whether or not they are agreeable to be enlisted as a referee. The Complainant did not have an option to decline to be a referee and was only informed about the loan when the loanee had defaulted or failed to pay in time.

II. WHETHER THE RESPONDENT FULFILLED ITS DUTY TO NOTIFY

21. The Respondent neglected and/or refused to fulfil its duty to notify as provided for under Section 29 of the Act as it did not adduce evidence to this office to show that prior to collecting the Complainant's personal data, it informed the Complainants' of: -

- a) Her specified data subject rights as specified under Section 26 of the Act;*
- b) The fact that her personal data was being collected;*
- c) The purpose for which her personal data was being collected; and*

d) *The third parties whose personal data has been or will be transferred to, including details of the safeguards adopted.*

22. The Respondent admitted to the same and stated, *"we have with time noted the inadequacies in our referee onboarding process, as far as the safeguarding of their data subject rights is concerned, and specifically, their right to be notified. It is, therefore, due to the foregoing, that we are currently in the process of creating a mechanism for persons being listed as such in a bid to meet the notification duty. This will ensure that referees are only persons who are aware of the client's loan and have consented to being listed as the client's referee."*

23. In view of the foregoing, I find that the Respondent failed to fulfil its duty to notify as provided for under Section 29 of the Act.

III. WHETHER THERE WAS ANY INFRINGEMENT OF THE COMPLAINANTS' RIGHTS AS DATA SUBJECTS AS PROVIDED FOR IN THE DATA PROTECTION ACT, 2019

24. Section 26 of the Data Protection Act provides for the rights of a data subject which are: -

- a) *to be informed of the use to which their personal data is to be put;*
- b) *to access their personal data in custody of data controller or data processor;*
- c) *to object to the processing of all or part of their personal data*
- d) *to correction of false or misleading data; and*
- e) *to deletion of false or misleading data about them.*

25. The Respondent by not informing the Complainant of the use to which her personal data was to be put, at the point of collection of the personal data, violated her right to be informed. The Respondent collected the contact of the Complainant from its client and did not inform the Complainant that her

personal data was being collected and what it was going to be used for. It did not inform the Complainant that it was collecting her mobile phone number for the purpose of debt recovery in case its client defaults from repaying a loan.

26. The Complainant objected to the processing of her personal data by the Respondent but was only met with threats as revealed by the screenshots of messages sent by the Respondent. The mere refusal to comply with the Complainant's request violated her right to object to processing of her personal data.

27. Further, the Respondent collected the mobile phone contact of the Complainant from a third party without her consent contrary to Section 28 (1) of the Act which states that, "*a data controller or data processor shall collect personal data directly from the data subject.*"

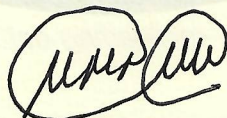
28. In view of the foregoing, I arrive at the conclusion that the Respondent violated the rights of the data subjects as provided for in the Act.

D. FINAL DETERMINATION

29. The Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable.
- ii. An Enforcement Notice to hereby be issued to the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya.

DATED at **NAIROBI** this 24th day of October 2023.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**