



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 2379 OF 2023**

**MIRUKA DANIEL..... COMPLAINANT**

**-VERSUS-**

**TRIDENT INSURANCE COMPANY LTD.....RESPONDENT**

**DETERMINATION**

*(Pursuant to Section 8 (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. This Complaint is in respect of the Complainant's claim that he received an email on 4<sup>th</sup> November, 2023 that he had taken an insurance policy with Trident Insurance involving a tuk-tuk. Upon looking at the PSV insurance policy, he noted that it had all his details yet he has never given out his details to the company.

**B. LEGAL BASIS**

2. Article 31 (c) and (d) of the Constitution of Kenya 2010 provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter 'this Office' or '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.

4. Section 8 (f) of the Act provides that the Office of the Data Protection Commissioner (hereinafter 'the Office') can receive and investigate any complaint by any person on infringements of the rights under the Act. Furthermore, Section 56 (1) of the Act 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.

### **C. BACKGROUND OF THE COMPLAINT**

5. The Office received a complaint by Miruka Daniel (hereinafter 'the Complainant') on 17<sup>th</sup> November 2023 pursuant to Section 56 of the Act and Regulation 4 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter the 'Enforcement Regulations') from the Complainant who is the aggrieved data subject.
6. Trident Insurance Company Ltd (hereinafter the 'Respondent') is an insurance company.
7. Pursuant to Regulation 11 of the Enforcement Regulations, on 11<sup>th</sup> December 2023, the Office notified the Respondent of the complaint filed against it *vide* a letter dated 7<sup>th</sup> December 2023 referenced ODPC/CONF/1/5 VOL 1 (623). The Respondent was to provide its response to the complaint within 14 days from the date of receipt of the notification letter.
8. On 24<sup>th</sup> January, 2024 the Office reminded the Respondent to respond to the notification letter. On the same day, the Respondent responded to the notification reminder requesting this Office to provide additional information with respect to the complaint. As requested, this Office availed the additional information with respect to the complaint to the Respondent.
9. This determination is therefore as a result of analysis of the complaint as received, investigations conducted by the Office and all the evidence adduced to this Office.

## **D. NATURE OF THE COMPLAINT**

### **I. COMPLAINANT'S CASE**

10. It is the Complainant's case that on 4<sup>th</sup> November 2023, he received an email that he had taken a policy with the Respondent's insurance company involving a tuk-tuk.
11. Upon looking at the PSV insurance policy relating to the purported tuk-tuk owned by him, he found out that the policy had all his details yet he had never bought a tuk-tuk and given his details to the Respondent insurance company.

### **II. RESPONDENT'S RESPONSE**

12. On 11<sup>th</sup> December 2023, the Office notified the Respondent of the complaint filed against it *vide* a letter dated 7<sup>th</sup> December 2023 referenced ODPC/CONF/1/5 VOL 1 (623). The Respondent was to provide its response to the complaint within 14 days from the date of receipt of the notification letter.
13. Subsequently, on 24<sup>th</sup> January 2024 the Office reminded the Respondent to respond to the notification letter. On the same day, the Respondent responded to the notification reminder requesting this Office to provide them additional information with respect to the complaint. As requested, this Office availed the additional information with respect to the complaint to the Respondent.
14. To date, as of the date of this determination, the Respondent is yet to respond to the allegations contained in the complaint despite being availed the requested additional information concerning the complaint.

## **E. SUMMARY OF EVIDENCE ADDUCED**

### **I. THE COMPLAINANT'S EVIDENCE**

15. The Complainant, submitted his complaint *via* the Office's website on 17<sup>th</sup> November 2023. As part of his evidence, he attached:
  - a. The email message that he received from the Respondent insurance company on the insurance certificate number,

- b. A copy of the certificate of insurance concerning the tuk-tuk.

## **II. THE RESPONDENT'S EVIDENCE**

16. The Respondent has, despite being notified of the complaint and all documentation relating to the complaint being availed to them, failed to respond to the complaint and/or provide evidence in response to the allegations contained in the complaint.

## **F. ISSUES FOR DETERMINATION**

17. Having considered the nature of the complaint, the evidence adduced by all parties to the complaint, and the investigations conducted by this Office, the issues for determination are therefore:
  - i. Whether the Complainant's personal data was lawfully processed; and
  - ii. Whether the Complainant is entitled to any remedy under the Act.

## **I. WHETHER THE COMPLAINANT'S PERSONAL DATA WAS LAWFULLY PROCESSED**

18. Before delving further, the Office notes that the Complainant brought his complaint to this Office as a first port of call. The Complainant did not attempt to exercise his right as envisaged under Section 26 of the Act with the Respondent in the first instance. There is no evidence of the exercise of these rights by the Complainant as against the Respondent. In as much as that is the case, this Office notified the Respondent of the complaint.
19. In our notification letter, among other things, the Respondent was to review the complaint and summarily resolve the same to the satisfaction of the Complainant. As such the Respondent had an opportunity of having the complaint resolved in the first place. The Respondent did not heed this invitation, no evidence of the resolution of the complaint summarily has been adduced. Therefore, the complaint remains unresolved warranting this Office to invoke its mandate.

20. From the allegations put forth by the Complainant, it is evident that the complaint relates to the processing of personal data wherein the Complainant alleges that he has never taken an insurance policy with the Respondent yet the Respondent went ahead and processed an insurance policy under the Complainant's name and details and sent the same to him *via* his e-mail address.
21. Section 2 of the Data Protection Act defines processing as "any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means such as:- (a) collection, recording, organization, structuring; (b) storage, adaptation or alteration; (c) retrieval, consultation or use; (d) disclosure by transmission, dissemination, or otherwise making available; or (e) alignment or combination, restriction, erasure or destruction."
22. The above definition augments the earlier stated position that at all material times, the Respondent was processing the Complainant's personal data.
23. Having established that indeed all the while the Respondent was processing the Complainant's personal data, we now turn to the question on whether the Complainant's personal data was lawfully processed.
24. Section 30 of the Data Protection Act provides the lawful bases for processing personal data. It provides:-

**30. Lawful processing of personal data**

*(1) A data controller or data processor shall not process personal data, unless*  
*(a) the data subject consents to the processing for one or more specified purposes; or*

*(b) the processing is necessary-*

*(i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract;*

*(ii) for compliance with any legal obligation to which the controller is subject;*

*(iii) in order to protect the vital interests of the data subject or another natural person;*

*(iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*

*(v) the performance of any task carried out by a public authority;*

*(vi) for the exercise, by any person in the public interest, of any other functions of a public nature;*

*(vii) for the legitimate interests pursued by the data controller or data processor by a third party to whom the data is disclosed, except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject; or*

*(viii) for the purpose of historical, statistical, journalistic, literature and art or scientific research.*

*(2).....*

25. The above-stated bases are the lawful instances upon which a data controller, the Respondent herein, should have processed the Complainant's personal data.

26. Section 25 of the Data Protection Act provides for the principles of data protection.

### **25. Principles of data protection**

*Every data controller or data processor shall ensure that personal data is:-*

- a) Processed in accordance with the right to privacy of the data subject;*
- b) Processed lawfully, fairly, and in a transparent manner in relation to any data subject;*
- c) Collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes;*
- d) Adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;*
- e) Collected only where a valid explanation is provided whenever information relating to family or private affairs is required;*

- f) Accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay;*
- g) Kept in a form which identifies the data subjects for no longer than is necessary for the purposes for which it was collected; and*
- h) Not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject. (emphasis ours)*

27. From the above it is evident that the principles of data protection are the hallmark of any form of processing of personal data. They provide the parameters within which the mode, means, and any form of processing of personal data should be carried out.

28. Related to the Complaint, we note that it is undisputed and or uncontroverted that the Respondent processed the Complainant's data and issued an insurance cover and certificate in the name of the Complainant yet the Complainant has never bought and/or owned a tuk-tuk and also he has never given out his details to the insurance company.

29. In addition to the foregoing, the Respondent has ignored and/or failed to cooperate with this Office to the extent that it never responded to the Complaint despite being issued with a reminder. The Office further followed up on the same via phone call, to no avail. The Respondent has failed to demonstrate any lawful basis for processing the Complainant's personal data.

30. As a result of the Respondent's failure to cooperate with this Office, the allegation and issues raised in the complaint herein are uncontroverted and as such, the complaint stands.

## **II. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDY UNDER THE ACT**


31. Pursuant to Regulation 14 (2) of the Enforcement Regulations, a determination shall state the remedy to which the Complainant is entitled. Further, the remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.
32. From the complaint filed with this Office, as a remedy, the Complainant seeks, *inter alia*, the revocation of the insurance policy containing his particulars by the Respondent. Whereas this is not one of the remedies contemplated in the above regulations, what the Complainant essentially seeks is the erasure of his personal data processed by the Respondent for purposes of issuing an insurance policy in his name.
33. Having found that the complaint herein is uncontroverted and it therefore stands, we hereby grant the remedy sought by the Complainant. The Respondent is hereby directed to revoke the insurance policy containing the Complainant's particulars and erase the Complainant's personal data processed by them.
34. Before we pen off, we would like to note that Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 further contemplates, as a remedy, the issuance of enforcement notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto. On that note, we are guided accordingly and an Enforcement Notice hereby ensues as against the Respondent.

#### **G. FINAL DETERMINATION**

35. In consideration of all the facts of the complaint, the evidence tendered and the investigations conducted, the Data Commissioner makes the following determination:
- i. The Respondent is hereby found liable.
  - ii. The Respondent is hereby directed to erase the Complainant's personal data from its systems.
  - iii. An Enforcement Notice be and is hereby issued against the Respondent.

- iv. Parties have the right to appeal this determination to the High Court of Kenya within 30 days.

DATED at **NAIROBI** this 14<sup>th</sup> day of February 2024



**Immaculate Kassait, MBS**  
**DATA COMMISSIONER**

