



OFFICE OF THE DATA PROTECTION COMMISSIONER

**ODPC COMPLAINT NO. 148 OF 2024 AS CONSOLIDATED WITH ODPC
COMPLAINT NO. 160 OF 2024**

LAWRENCE MAKHULI.....1ST COMPLAINANT

VIVIAN ASHLEIGH.....2ND COMPLAINANT

-VERSUS-

CERES TECH LIMITED T/A ROCKETPESA.....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 Office received two complaints on 24th January 2024 and 25th January 2024. The complaints relate to the alleged contacting of the Complainants by the Respondent regarding loans that they were unaware of and had not consented to be enlisted as referees or emergency contact persons.

B. LEGAL BASIS

2. Article 31 (c) and (d) of the Constitution of Kenya provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter known as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter as 'this Office' and/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(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) 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.
5. This determination is premised on the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as 'the Enforcement Regulations') which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

C. BACKGROUND OF THE COMPLAINTS

6. This Office received two complaints from the 1st and 2nd Complainant on 24th January 2024 and 25th January 2024 respectively. The complaints were lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainants who were aggrieved data subjects.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaints filed against it vide a letter dated 30th January 2024 and referenced ODPC/CONF/1/5 VOL 1 (769). In the notification of the complaints, the Respondent was informed that if the allegations by the Complainants were true, it was in violation of various provisions of the Act. Further, the Respondent was asked to provide this Office with the following:
 - a. A response to the allegations made against it by the Complainants;
 - b. Any relevant materials or evidence in support of the response;
 - c. Details of how it obtained the Complainants' personal data;

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- d. The legal basis relied upon to process and engage with the Complainants' personal data and whether or how it fulfills the duty to notify under Section 29 of the Act;
 - e. Whether the Complainants consented to the processing of their personal data; and
 - f. The mitigation measures adopted or being adopted to address the complaints to the satisfaction of the Complainants and to ensure that such occurrence mentioned in the complaints does not take place again;
8. The Respondent filed its response to the complaints via a letter dated 12th February 2024.
 9. This determination is therefore as a result of analysis of the complaints as received, the response by the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINTS

10. The Complainants alleged that they were contacted by the Respondent regarding loans that they were unaware of and had not consented to be enlisted as referees or emergency contacts.

E. SUMMARY OF EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

11. The 1st Complainant alleged that he was contacted by the Respondent regarding a loan that he never took. He produced a screenshot of a WhatsApp message sent to him as proof. He further stated that he has been receiving too many calls to the point that he is not able to use his phone.
12. The 2nd Complainant alleged that she has been receiving threatening messages and calls from the Respondent. She provided screenshots of her call log and messages as proof.

ii. THE RESPONDENTS' RESPONSE

13. The Respondent stated that it had investigated the matter and found out the source of the third-party contact information. It stated that its agent, who is also

a former employee at Zillions Credit Limited, had a former colleague one G***** M***** of mobile number 079*****27, who sent her the details of the Complainants through a phone call.

14. The Respondent stated that its agent, who was also a former agent of Zillions Credit Limited, knew the Complainants since the Complainants work at Zillions Credit limited. No evidence was adduced to prove the above assertions.
15. The Respondent stated that it had looked into the screenshots sent by the 2nd Complainant keenly and categorically affirm that they were drafted by the 2nd Complainant for purposes of serving as evidence against it. It averred that the mobile number used does not belong to its company or agents but belongs to Zillions Credit Limited. The Respondent produced a screenshot from the Truecaller Application as proof indicating that the line that contacted the 2nd Respondent belonged to one "*Paul Zashloan Spam*".
16. Regarding the WhatsApp screenshot produced by the 1st Complainant, the Respondent stated that the mobile phone number used to contact the 1st Complainant does not belong to it or its agents but is registered under one "*M***** M******".
17. Further, the Respondent stated that it does not have access to third party contacts and that the above scenario serves as wakeup call that there are persons masquerading as clients for purposes of maliciously soliciting fines against its company.
18. In conclusion, the Respondent stated that it is committed to the training of its agents and that it has regular check-ups and a quality assurance office with its clients to ensure guidelines set are followed to the latter.

F. INVESTIGATIONS UNDERTAKEN

19. The Office analysed the documents provided by the Complainants and the Respondent.
20. The Office notes that the evidence adduced by the Respondent regarding one of the numbers that contacted the Complainant is not from a reliable source. The

Respondent searched the subject number using the Truecaller application and the said evidence can not be verified to ensure that it is credible and accurate.

21. The Office also notes that the screenshots adduced by the Complainants could not directly link the numbers to the Respondent. No evidence was adduced by the Complainants to prove that the mobile numbers used to contact them belonged to the Respondent or its agents.
22. The Office conducted a site visit at the Respondent's premises on 18th April 2024 to carry out further investigations into the matter.
23. During the said site visit the Respondent stated that the mobile phone numbers used to contact the Complainants did not belong to them but belonged to its competitor, Zillions Credit Limited, who operate an application known as Zash Loan. No evidence was adduced to prove that the mobile numbers belonged to Zillions Credit limited.
24. The Respondent further stated that they register all their mobile phone numbers under the Company name and not under individuals. Investigation Officers from the Office sought to find out whether the mobile phone numbers that contacted the Complainants belong to the Respondent. The Officers requested access to the Respondent's database and performed a search. A search was conducted and no evidence was found indicating that the mobile phone numbers belonged to the Respondent as there was no trace of their existence in their database.
25. The Respondent was asked whether they collect phone book contacts of their customers and they responded by stating that they don't collect phone book contacts of their customers and that collection of phone book contacts is prohibited by Google Playstore policies. A cursory perusal of the notice displayed on their Rocketpesa mobile application, which is available for download at the Google Playstore, indicated that the Respondent collects all phone book contacts when the customer gives them address book permissions.
26. On the issue of enlisting persons as emergency contacts or referees, the Respondent stated that they did not collect details of emergency contacts or referees. A perusal of the notice in their Rocketpesa mobile application indicates

that the app allows customers to select emergency contacts for loan applications. Investigation Officers together with representatives of the Respondent downloaded the application and sought to see how it works. They found that the application indeed requests customers to add two emergency contacts and that the persons added as emergency contacts are not notified when the customer inputs their mobile number and adds them as an emergency contact.

27. The Respondent stated that the purpose of collection of emergency contacts is for completion of the loan application process and that one can not apply for a loan without adding emergency contacts. They further stated that emergency contacts are not contacted when a customer defaults on paying their loan.
28. No evidence was found from the Respondent's database indicating that the Complainants were enlisted as emergency contact persons.
29. Investigation Officers then sought to speak to the Respondent's agents, to confirm whether they are trained on data protection and privacy. The request was declined by the Respondent.
30. The Investigation Officers left and noted the efforts put by the Respondent to obstruct investigations by denying them the opportunity to question its agents.

G. ISSUES FOR DETERMINATION

31. In light of the above, the following issues fall for determination by this Office:
 - i. Whether the mobile phone numbers that contacted the Complainants belong to the Respondent.
 - ii. Whether the Complainants are entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE MOBILE PHONE NUMBERS THAT CONTACTED THE COMPLAINANTS BELONG TO THE RESPONDENT

32. The 1st Complainant produced a screenshot indicating that mobile phone number 0708****58 allegedly belonging to the Respondent contacted him regarding a loan that he was not a party to. He did not adduce any evidence to prove that the said number belonged to the Respondent. The 1st Complainant did not also adduce any

evidence to show how he knew or found out that the said number belonged to the Respondent (Rocketpesa).

33. The 2nd Complainant alleged that the Respondent was disturbing her peace as she was receiving threatening calls and messages from them.

34. She alleged that the mobile phone numbers 0796****64 and 0703****95 were used to contact her. No evidence was adduced to prove that the said mobile numbers belonged to the Respondent and how the Complainant found out that the said mobile numbers belonged to the Respondent.

35. Investigation Officers visited the Respondent's premises and a search on their database did not find the subject mobile numbers that contacted the Complainants.

36. From the foregoing, this Office finds that the mobile phone numbers that contacted the Complainants did not belong to the Respondent.

II. WHETHER THE COMPLAINANTS ARE ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.

37. Pursuant to Regulation 14 (2) of the Enforcement Regulations, a determination shall state the remedy to which a complainant is entitled. Further, the remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.

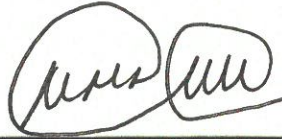
38. Having found that that the mobile phone numbers that contacted the Complainants did not belong to the Respondent, the Office finds that the Complainants are not entitled to any remedies under the Act and Regulations.

H. FINAL DETERMINATION

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

- i. The Complaint is hereby dismissed.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 20th day of April 2024.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

