



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 318 OF 2024

ERIC KARIUKI.....COMPLAINANT

-VERSUS-

CERES TECH LIMITED T/A LEMONCASH.....RESPONDENT

DETERMINATION

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

A. INTRODUCTION

1. The Office received a complaint on 22nd February 2024 from the Complainant. The complaint relates to the alleged contacting of the Complainant by the Respondent demanding payment of a loan that he was not a party to.

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 (Complaint 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 COMPLAINT

6. This Office received a complaint from the Complainant on 22nd February 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 28th February 2024 and referenced ODPC/CONF/1/5 VOL 1 (842). In the notification of the complaint, the Respondent was informed that if the allegations by the Complainant 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 Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. The legal basis relied upon to process and engage with the Complainant's personal data;
 - d. A detailed description of how it fulfills the rights of a data subject;

- e. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint does not take place again; and
- f. Any other relevant information it wishes the Office to consider.
8. The Respondent filed its response to the complaint *via* a letter dated 7th March 2024.
9. It is important to note that the parties attempted to resolve the dispute *via* mediation, facilitated by this Office in accordance with Section 9(c) of the Act. However, the mediation process was unsuccessful thereby necessitating the complaint to be determined as per Regulation 15(8) of the Enforcement Regulations.
10. This determination is therefore as a result of analysis of the complaint as received, the response by the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

11. The complaint relates to the alleged contacting of the Complainant by the Respondent demanding payment of a loan that he was not a party to.

E. SUMMARY OF EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

12. The Complainant alleged that on 21st November 2023, he received over 200 calls in less than half an hour from the Respondent, demanding payment of a loan he was not party to. He provided screenshots of his call logs as proof of the same, indicating that he was contacted by mobile phone numbers 0794****02, 0740****59 and 0710****04.
13. The Complainant further stated that the calls made were frustrating and stressful and greatly affected his line of work as he was forced to switch off his phone yet it is an important tool in his trade.
14. The Complainant sought for compensation from the Respondent.

ii. THE RESPONDENT'S RESPONSE

15. The Respondent stated that it had conducted an internal review and discovered that the Complainant's information was not present in its data log. It was therefore unable to confirm whether the alleged calls originated from its Company.

16. The Respondent welcomed any investigations into its data log by this Office to ascertain the veracity of the Complaint.

F. INVESTIGATIONS UNDERTAKEN

17. The Office conducted a site visit at the Respondent's premises on 20th May 2024 to carry out further investigations into the matter.

18. During the said site visit the Respondent stated that the mobile phone numbers used to contact the Complainant did not belong to them.

19. The Respondent stated that the Complainant was a third party to its client E***** M***** of mobile number 0727****44.

20. Further, the Respondent stated that it does not contact third parties or emergency contacts but only contacts its clients when they default on paying loans disbursed.

21. The Respondent was asked whether it collects 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.

22. In addition, the Respondent stated that its Lemoncash mobile application was pulled down from Google Playstore and is no longer available for download.

23. The Respondent was requested to provide the Lemoncash terms and conditions and they sent a link to the said document.

24. Paragraph 4.3 of the said terms and conditions states that, "*You hereby agree and authorize LemonKash to verify information including, but not limited to, data relating to your phone (including, without limitation, your phone's history, your **phone contact lists**, and etc) from your equipment, from any sms sent to you by the mobile money providers and any financial service providers relating to your*

use of the mobile money service and such other information as Lemonkash shall require for purposes of providing you the services (the relevant information)."

This statement clearly indicates that the Respondent accesses its clients contact list.

25. The Office sought to examine the Respondent's database to verify whether the Complainant's mobile phone number and the mobile phone numbers that were used to contact him were present in their database.
26. The Respondent granted investigation Officers access to the frontend of their database but denied them access to the backend which was crucial in ascertaining whether the Complainant's personal data was present in their database. This act amounts to obstruction of the Data Commissioner contrary to Section 61 of the Act.
27. No evidence was found from the Respondent's frontend of its database indicating that the Complainant was enlisted as an emergency contact person or contacted by the aforementioned mobile numbers allegedly belonging to the Respondent.

G. ISSUES FOR DETERMINATION

28. In light of the above, the following issues fall for determination by this Office:

- i. Whether the mobile phone numbers that contacted the Complainant belong to the Respondent; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

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

29. The Complainant produced screenshots of his call log indicating that mobile phone number 0794****02, 0740****59 and 0710****04 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 mobile phone numbers belonged to the Respondent.

30. Investigation Officers visited the Respondent's premises and conducted a search on the Respondent's frontend side of their database. No evidence was found indicating that the Complainant's personal data was on their database or that the subject mobile numbers that contacted him belonged to the Respondent.

31. It is worth noting that the Office was denied access to the backend of the Respondent's database which was crucial in ascertaining whether the Complainant was in their database and whether the said mobile numbers belonged to the Respondent.

32. In the absence of any evidence implicating the Respondent, this Office finds that the mobile phone numbers that contacted the Complainant did not belong to the Respondent.

II. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.

33. 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.

34. Section 61(a) & (b) of the Act provides for the offence of obstruction of the Data Commissioner and states that, "*a person who, in relation to the exercise of a power conferred by Section 9 – obstructs or impedes the Data Commissioner in the exercise of her powers; fails to provide assistance or information requested by the Data Commissioner; commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both.*"

35. The Respondent by denying Investigation Officers access to the backend of their database obstructed the Data Commissioner in the exercise of her powers. It is worth noting that the Respondent in its response to the Complaint filed against it via a letter dated 7th March 2024, welcomed investigations into its data log by the Office to ascertain the veracity of the Complaint. It is also worth noting that the

Office notified the Respondent of a site visit in relation to the complaint filed against it and informed the Respondent that it should have an ICT personnel with access to the database present on the material day of the site visit.

36. From the above, a recommendation for prosecution is hereby made to the Director(s) of the Respondent's Company, for obstruction of the Data Commissioner contrary to Section 61 of the Act.

37. In conclusion and having found that the mobile phone numbers that contacted the Complainant did not belong to the Respondent, the Office hereby dismisses the Complaint.

H. FINAL DETERMINATION

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

- i. The Complaint is hereby dismissed.
- ii. A recommendation for prosecution is hereby made against the Director(s) of the Respondent's Company for obstruction of the Data Commissioner contrary to Section 61 of the Act.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 21st day of May 2024.


**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

