



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 387 OF 2024**

**ESTHER KANZA MBUVU..... COMPLAINANT**

**-VERSUS-**

**GRAIN INDUSTRIES LIMITED.....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 a complaint on 6<sup>th</sup> March 2024 from the Complainant. The complaint relates to the alleged use of the Complainant’s image for marketing purposes on billboards and YouTube without obtaining consent from the Complainant.

**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 as ‘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(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 6<sup>th</sup> March 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who is 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 19<sup>th</sup> March 2024 and referenced ODPC/CONF/1/5 VOL 1 (872). 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. Proof of consent from the Complainant to use her image in various platforms;
  - e. Details of when it received a request from the Complainant or her Advocate to pull down the subject images;
  - f. A detailed description of how it fulfils the rights of a data subject;
  - g. 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
  - h. Any other relevant information it wishes the Office to consider.
8. The Respondent responded to the notification of complaint letter *vide* a letter dated 11<sup>th</sup> April 2024.
  9. On 26<sup>th</sup> April 2024, the Office forwarded the Respondent's response to the Complainant and invited her to file a rejoinder to the same.
  10. On 13<sup>th</sup> May 2024, the Complainant filed a rejoinder to the Respondent's response.
  11. This determination is therefore as a result of analysis of the complaint as received, the response from the Respondent, the Complainant's reply to the Respondent's response and investigations conducted by the Office.

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

12. The complaint relates to the alleged use of the Complainant's image for marketing purposes on billboards and YouTube without obtaining consent from the Complainant.

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

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

13. The Complainant alleged that the Respondent used her image in its marketing billboard, YouTube promotions and social media platforms under the caption "*Tunashukuru Mama Wa Ajabu*" without her consent. The Complainant

provided photos of the billboards as proof and a link to the alleged YouTube video. The Complainant did not provide any evidence of her image being used on the Respondent's social media platforms.

14. The Complainant stated that on or about 30<sup>th</sup> August 2023, while going about her daily errands, she saw a billboard erected along Malindi Road at Bamburi which had several photographic images including herself. The billboard was depicted as an advertisement or publication endorsed and promoted by the Respondent, the maker of Ajab Flour. The Complainant produced a photo of the said billboard as proof.
15. The images featured on the billboard were accompanied by the text "*Tunashukuru mama wa Ajabu for being the best!*" along with branding materials promoting Ajab Home Baking Flour, a product associated with the Respondent.
16. The Complainant stated that later on, it came to her attention that the Respondent was further using her image on a YouTube promotional advert using the link <https://www.youtube.com/watch?v=Mqach1b7KHk>
17. The Complainant averred that she was never engaged by any of the Respondent's employees, servants and/or agents in any way and has never consented to the use of her personal image to advertise or publicize any product by the Respondent. In addition, the use of her image without consent, was not only unlawful but exploitative.
18. Further, the Complainant stated that the alleged consent obtained by the Respondent was from third parties and that the Respondent never bothered to obtain consent directly from her. The Complainant provided a copy of the consent form used by the Respondent as proof.
19. The Complainant stated that on 2<sup>nd</sup> November 2023, she wrote a demand letter to the Respondent seeking immediate removal of the billboard, a public apology and general damages for use of her image. The Respondent ignored and/or refused to respond to the demand letter. The Complainant provided a copy of a demand letter dated 31<sup>st</sup> October 2023 as proof.

20. The Complainant in her reply to the Respondent's response stated that the Respondent used her image in three billboards and not one as alleged. The billboards in question were located; along the Mombasa Malindi Highway at Nyali, at Kibarani area in Mombasa and at the Likoni area in Kilifi County. The Complainant provided photos of the said billboards as proof.

21. Further, the Complainant alleged that the campaign by the Respondent was a regional promotional campaign and it is highly unlikely that her image was only used in three billboards.

22. The Complainant averred that the Respondent has wilfully misled this Office in its response dated 11<sup>th</sup> April 2024 by stating that the Complainant's image was used in one billboard when they knew that the image was not used in one billboard.

23. In conclusion, the Complainant prayed for the following remedies: -

- a) A declaration that the use of the Complainant's image was without her consent.
- b) A declaration that the use of personal data by the Respondent for commercial purposes without consent amounted to a breach under the Data Protection Act.
- c) This Office to impose a fine to the Respondent for posting the image of the Complainant without her consent.
- d) An order of general damages to the Complainant for use of her image without consent.
- e) Any other order that this Office may deem fit to grant.

## II. THE RESPONDENT'S RESPONSE

24. The Respondent responded to the Complaint *vide* a letter dated 11<sup>th</sup> April 2024, on a "without prejudice" basis. It should be noted that this response was pursuant to a Notification of Complaint Letter from this Office, exercising its statutory authority under Regulation 11 of the Enforcement Regulations.

As such, the response cannot be deemed to have been on a "without prejudice" basis.

25. The Respondent stated that on 13 July 2023, it launched a promotional campaign titled "*TUNASHUKURU MAMA WA AJABU*" (the Campaign). The purpose of the campaign was to celebrate mothers across Kenya during the Mother's Day period by inviting participants to submit pictures of their mothers for public display on billboards and social media platforms. The Campaign was open to individuals nationwide and was subject to Terms & Conditions which were made available to participants (T&Cs).
26. The Respondent engaged Brainwave Communications Limited (Brainwave) as its marketing agency to spearhead and run the Campaign. Such engagement included the requirement and expectation that Brainwave ensures compliance with all necessary laws and regulations and best practices in the running of the Campaign. Such compliance would include managing the setting up of the Campaign website, managing the collection and storage of personal data, and ensuring the necessary legal documentation was put in place. This was primarily due to Brainwave's expertise in administering similar campaigns. Brainwave hosted a webpage through which participants enrolled to take part in the Campaign, and the webpage contained a hyperlink to the T&Cs.
27. The Respondent stated that the first billboard in respect of the campaign was put up on 10<sup>th</sup> August 2023. Throughout the Campaign, the Complainant's image was only featured on one billboard and one video on YouTube. It did not feature on any social media platform (that is, Facebook and Instagram). It is therefore wholly inaccurate for the Complainant, to allege that her image was used on 'social media platforms'.
28. The Respondent stated that it relied on the Complainant's consent which it presumed was provided to by her daughter, L\*\*\*\* W\*\*\*\*\* K\*\*\*\*, as part of the campaign to process her personal data.

29. The Complainant's daughter enrolled to take part in the Campaign as a participant and provided the Complainant's personal data subject to the T&Cs, which she accepted. The T&Cs provide, among other things, that: -

- a) participants are required to confirm that they are adults;
- b) participants are required to review the T&Cs and agree to them before proceeding with their application to take part in the Campaign;
- c) participants agree and confirm to the Respondent and Brainwave that they have obtained the necessary express consents in writing from their mothers prior to sharing personal data with the Respondent and Brainwave;
- d) the Respondent may require the participants to prove that they obtained lawful consent from their mothers; and
- e) participants are required not to share any information which would violate any applicable laws and regulations.

30. Further, the Respondent stated that the T&Cs are easily available on the Campaign's webpage and are not particularly lengthy. Therefore, it was fair to assume that participants had read and understood them. Due to the breadth of the Campaign, and the large number of entries received by the Respondent and Brainwave, the Respondent, made a reasonable assumption that all participants had familiarized themselves with the T&Cs and had obtained the necessary consents. In any case, the T&Cs provided that the Respondent, was within its rights to request proof of such consent.

31. The Respondent stated that it indirectly collected the Complainant's personal data from her daughter in reliance of her daughter's acceptance of the T&Cs and that the confirmation contained therein was to the effect that the Complainant's daughter had sought the Complainant's express written consent.

32. The Respondent stated that the Complainant's daughter, by agreeing to obtain the Complainant's consent and warranting to the Respondent, and Brainwave that she had indeed obtained it, the Complainant's daughter acted

as a data controller in respect of her mother's personal data. The Respondent therefore collected the Complainant's personal data indirectly on the basis that she had consented to the indirect collection through her daughter. Further, the Respondent collected the personal data pursuant to Section 28(2)(c) of the Data Protection Act, 2019 (DPA). As a data controller in her own right, the Complainant's daughter shared personal data with the Respondent and Brainwave for purposes of the Campaign, and this purpose (and the attaching conditions) was made clear to the Complainant's daughter through the T&Cs.

33. The Respondent stated that it acted speedily to address the complaint as soon as it was received. However, it was only aware of the Complaint when served with the letter from this Office on 20 March 2024.

34. The Respondent stated that the demand letter dated 31 October 2023 from the Complainant was sent to its general email address (info@grainindustries.com) which, being the email listed on its website, receives a high volume of emails on a daily basis. The Complainant did not serve it with a physical copy of the demand letter and the Respondent did not receive any emails following up on the demand letter. Consequently, the demand letter came to the Respondent's attention when it received the letter from this Office on 20 March 2024. It is therefore unfortunate that the Complainant imputes ill intent on the Respondent's part by alleging that it delayed in responding with hopes that the Complaint would be withdrawn.

35. In addition, and even before the demand letter was sent, the Respondent had instructed Brainwave to take down the core campaign materials (specifically, the billboards put up as part of the Campaign). As of 17 October 2023, all billboards had been taken down.

36. Once the Respondent received the Complaint from this Office, it instructed Brainwave to take down all the remaining campaign materials, primarily being a video on YouTube and some images on social media platforms within a few days. It is important to point out that the Complainant's image was not featured on any social media platform. Therefore, once the billboard was

taken down on 17<sup>th</sup> October 2023, and the YouTube video on 27<sup>th</sup> March 2024, there remained no use of the Complainant's image by the Respondent. As at the date of this response, all materials related to the Campaign in general have been taken down.

37. In response to the Complainant's prayer for damages, the Respondent stated that the Complainant has failed to provide any details or proof of any harm occasioned to her. Her claim for damages is at best vague and amorphous. She fails to disclose or particularise, to any degree of specificity, any harm occasioned to her as a result of her image featuring in the Campaign. Her claims are further weakened by the fact that she should have been aware of the Campaign through her daughter, who warranted to the Respondent that she had obtained her consent.

38. With respect to the mitigative measures adopted by the Respondent to ensure compliance with the Act: -

- a) The Respondent ceased to engage in the Campaign and had Brainwave withdraw all advertisements on all platforms;
- b) The Respondent was already registered as both a data controller and data processor in 2022;
- c) The Respondent had in place its data protection policy; and
- d) Since receipt of the Complaint, the Respondent has commenced a review to align its personal data handling processes with the Act where any misalignment may be found to exist. This includes engaging in refresher staff awareness trainings (as it has previously sensitised staff on data protection compliance).

39. In support of the above assertions, the Respondent provided the following: -

- a) a copy of the T&Cs;
- b) a screenshot of the webpage through which participants signed up for the Campaign;
- c) a copy of the details provided by the Complainant's daughter as part of her enrolment to the Campaign;



- d) copies of email correspondence between the Respondent, and Brainwave which took place in October 2023, through which the respondent instructed Brainwave to take down the billboards which were put up as part of the Campaign and Brainwave confirmed the same had been done;
- e) copies of email correspondence between the Respondent and Brainwave which took place in March 2024 following the Respondent's receipt of the Complaint through which the Respondent instructed Brainwave to take down the remaining advertisement materials relating to the Campaign and Brainwave confirmed the same had been done;
- f) copies of the Respondent's certificates of registration as a data controller and data processor; and
- g) a copy of the Respondent's data protection policy.

#### **F. INVESTIGATIONS UNDERTAKEN**

- 40. This Office reviewed the complaint as lodged, the Respondent's response, the Complainants reply to the Respondent's response and all the supporting documents provided by both parties.
- 41. Investigation Officers from this Office also visited the alleged locations where the billboards in question were located (along the Mombasa Malindi Highway at Nyali, at Kibarani area in Mombasa and at the Likoni area in Kilifi County), and confirmed that they had been pulled down.

#### **G. ISSUES FOR DETERMINATION**

- 42. It is not in contention that the Respondent used the Complainant's image to market its products, by putting it up on a billboard and on YouTube.
- 43. In light of the above, the following issues fall for determination by this Office:
  - i. Whether the Respondent obtained valid consent to process the personal data of the Complainant;

- ii. Whether there was infringement of Complainant's rights under the Act;
- iii. Whether the Respondent fulfilled its obligations under the Act; and
- iv. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

**I. WHETHER THE RESPONDENT OBTAINED VALID CONSENT TO PROCESS THE PERSONAL DATA OF THE COMPLAINANT**

44. The Complainant stated that she has never consented to the use of her personal image to advertise or publicize any product by the Respondent. Further, the alleged consent obtained by the Respondent was from third parties and that the Respondent never bothered to obtain consent directly from her.

45. On the other hand, the Respondent stated that it indirectly collected the Complainant's personal data from her daughter in reliance of her daughter's acceptance of the T&Cs and that the confirmation contained therein was to the effect that the Complainant's daughter had sought the Complainant's express written consent.

46. Section 28(1) of the Act provides for collection of personal data and states, "*A data controller or data processor **shall** collect personal data **directly from the data subject.***"

47. Section 28(2) states, "*Despite sub-section (1), personal data may be collected indirectly where –*

- a) *the data is contained in a public record;*
- b) *the data subject has deliberately made the data public;*
- c) *the data subject has consented to the collection from another source;*
- d) *the data subject has an incapacity, the guardian appointed has consented to the collection from another source;*
- e) *the collection from another source would not prejudice the interests of the data subject;*
- f) *collection of data from another source is necessary –*

- (i) *for the prevention, detection, investigation, prosecution and punishment of crime;*
- (ii) *for the enforcement of a law which imposes a pecuniary penalty; or*
- (iii) *for the protection of the interests of the data subject or another person."*

48. The Respondent did not collect the data directly from the Complainant. Instead, the Respondent purportedly relied on Section 28(2)(c) of the Act to collect and process the Complainant's personal data. No evidence was provided by the Respondent to prove that the Complainant had consented to the collection of her personal data from her daughter.

49. The form used by the Complainant to obtain consent from her daughter did not provide for consent from the mother (data subject), whose photo was going to be used, but only provided for consent from the daughter who was the participant.

50. Section 32(1) of the Act states that, "*a data controller or a data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.*" This burden has not been discharged by the Respondent as it has not provided evidence to prove that it obtained consent directly from the Complainant or that the Complainant consented to the collection of her personal data from her daughter.

51. Further, the Respondent did not prove that it satisfied the reasons set out in Section 30(1)(b) that allow for the processing of personal data without obtaining consent from the data subject.

52. From the above, this Office finds that the Respondent did not obtain consent from the Complainant to process her personal data and that the consent obtained from her daughter was invalid.



## II. WHETHER THERE WAS AN INFRINGEMENT OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

53. Section 26(a) of the Act provides for the right of a data subject to be informed of the use to which their personal data is to be put. The Respondent did not inform the Complainant that her image was going to be used for marketing purposes on a billboard and on YouTube, therefore violated the Complainant's right to be informed.
54. Section 40(1)(b) of the Act provides for the right of erasure and states that, "*a data subject may request a data controller or data processor to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully.*"
55. The Complainant exercised her right of erasure by writing a demand letter dated 31<sup>th</sup> October 2023 to the Respondent. The Respondent despite acknowledging that it received the demand on its general email address (info@grainindustries.com), which is the email listed on its website, did not act on the demand and pull down all the campaign materials until 27<sup>th</sup> March 2024, after receiving a Notification of Complaint letter from this Office.
56. Regulation 12(3) of the Data Protection (General) Regulations, 2021 states that "***a data controller or a data processor shall respond to a request for erasure within fourteen days of the request.***" The Respondent intentionally or negligently ignored the Complainant's request and only complied with it after it received the Notification of Complaint letter from this Office, which was long after the 14 days provided for under the above regulation had lapsed.
57. From the foregoing, this Office finds that the Complainant's right to be informed and her right of erasure were violated by the Respondent.



### III. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT;

58. The Respondent is a data controller within the definition of the Act and therefore has obligations pursuant to the Act.

59. The Respondent had an obligation under Section 25 of the Act to ensure that the Complainant's personal data is, amongst others:

- i. processed in accordance with her right to privacy;
- ii. processed lawfully, fairly and in a transparent manner in relation to the Complainant;
- iii. collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes; and
- iv. collected only where a valid explanation is provided whenever information relating to private affairs is required.

60. In collecting personal data, the Respondent is mandated by Section 28(1) of the Act to collect the personal data directly from the data subject. The Respondent admitted to having collected the Complainant's image from a third party contrary to the provisions of Section 28(1) of the Act. Section 28(2) of the Act sets out instances where personal data may be collected indirectly. The Respondent did not demonstrate that any of the conditions set out in Section 28(2) were relevant in this matter.

61. Section 29 of the Act provides an obligation to data controllers or data processors of the duty to notify the data subject. Notably, the data subject has to be informed of, *inter alia*;

- i. rights specified under Section 26;
- ii. the fact that personal data was being collected;
- iii. the purpose of collection of their personal data;
- iv. a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data.

The Respondent had a duty to notify the Complainant of her rights under the Act, the fact that it had collected her image and was going to use it in a marketing campaign, and the measures it has in place to ensure safety of her personal data. The Respondent failed to fulfil this obligation under Section 29 of the Act.

62. Section 30 of the Act gives instances where a data controller or data processor can lawfully process personal data. It states that a data controller or data processor shall not process data unless the data subject consents to the processing for one or more specified purposes or the processing is necessary for the reasons given in subsection (b). The Respondent admitted that it processed the Complainant's personal data without obtaining her consent. Further, the Respondent did not prove that it satisfied the reasons set out in Section 30(1)(b) that allow for the processing of personal data without obtaining consent from the data subject.

63. Section 37(1) of the Act states that, ***"a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person has sought and obtained express consent from a data subject."***

64. The Respondent's act of publishing the Complainant's image on a billboard and on YouTube was intended to attract customers who would in turn buy their Ajab flour. The Respondent admitted to having used the Complainant's image for commercial purposes without having sought and obtained express consent from the Complainant, therefore it did not fulfill its obligation under Section 37(1) of the Act.

65. Section 42(2), (3) & (4) of the Act provides as follows -

*(2) Where a data controller is using the services of a data processor—*

*a) the data controller shall opt for a data processor who provides sufficient guarantees in respect of organisational measures for the purpose of complying with section 41(1); and*

*b) the data controller and the data processor shall enter into a written contract which shall provide that the data processor shall act only on instructions received from the data controller and shall be bound by obligations of the data controller.*

*(3) Where a data processor processes personal data other than as instructed by the data controller, the data processor shall be deemed to be a data controller in respect of that processing.*

*(4) A data controller or data processor shall take all reasonable steps to ensure that any person employed by or acting under the authority of the data controller or data processor, complies with the relevant security measures.*

66. The particulars of the contract envisaged between the Data Controller and the Processor are espoused in Regulation 24(2) of the Data Protection (General) Regulations.

67. No evidence was adduced by the Respondent to demonstrate it entered into a data processing agreement with Brainwave to process personal data on its instructions. Therefore, Brainwave who acted as the Respondent's data processor cannot be held liable as there is no evidence indicating that it acted contrary to the instructions issued by the Respondent, who in this case was the Data Controller.

68. From the foregoing, this Office finds that the Respondent did not fulfil the above obligations as set out under the Act and the attendant Regulations.

#### **IV. WHETHER THE COMPLAINANT IS ENTITLED TO THE REMEDIES UNDER THE ACT**

69. 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.

70. The Complainant prayed for a declaration that the use of the Complainant's image was without her consent and a declaration that the use of personal data

by the Respondent for commercial purposes without consent amounted to a breach under the Data Protection Act. A declaration is not one of the remedies provided for under Regulation 14(3) and therefore this Office has no power to issue one. Therefore, the prayer for the above declaration is hereby denied.

71. The Complainant prayed for a fine to be imposed to the Respondent for using her image without consent. It is worth noting that a fine may only be imposed after non-compliance with an enforcement notice. This prayer is therefore premature and hereby denied.
72. The Complainant prayed for compensation in the form of general damages for the use of her image without consent.
73. Section 65 of the Act provides for compensation to data subjects and states that, *"a person who suffers damage by reason of a contravention of a requirement of the Act is entitled to compensation for that damage from the data controller."*
74. Section 65(4) of the Act states that, *"damage includes financial loss and damage not involving financial loss, including distress."*
75. Further, Regulation 14(3)(e) of the Enforcement Regulations provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
76. In considering whether to issue compensation, this Office takes into consideration the fact that the complaint is in respect of use of personal data for commercial purposes without consent from the data subject.
77. Further, the Office considers the fact that the Respondent either intentionally or negligently violated the Complainant's right to be informed and denied her the right of erasure of her personal data by failing to take down the images on all the platforms that it had published it, when notified by the Complainant.
78. From the foregoing, the Respondent is hereby **ordered to pay the Complainant Kenya Shillings one million only (KES. 1,000,000)** as compensation for the violation of the Complainant's rights under the Act and

for the use of the Complainant's personal data for commercial purposes without her express consent.

79. Having found that the Respondent violated the Complainant's rights provided for under the Act and did not fulfil its obligations provided for under the Act, an enforcement notice shall be issued to the Respondent.

#### H. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable for violating the Complainant's right to be informed, her right of erasure and for using her personal data for commercial purposes without obtaining her express consent.
- ii. The Respondent is hereby **ordered to pay the Complainant Kenya Shillings one million (KES. 1,000,000)** as compensation.
- iii. An enforcement notice to hereby issue against the Respondent.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 3<sup>rd</sup> day of June 2024.



**IMMACULATE KASSAIT, MBS**

**DATA COMMISSIONER**