



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 380 OF 2024**

**SIGEI CALEB.....COMPLAINANT**

**-VERSUS-**

**MULLA PRIDE LIMITED.....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 6<sup>th</sup> March 2024 from the Complainant. The complaint relates to the alleged contacting of the Complainant by the Respondent regarding a loan that he was not 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 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 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 22<sup>nd</sup> March 2024 and referenced ODPC/CONF/1/5 VOL 1 (882). 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. Confirmation of whether the mobile phone numbers that contacted the Complainant belong to it or its agents;
  - d. The legal basis relied upon to process and engage with the Complainant's personal data;



- e. A detailed description of how it fulfills the rights of a data subject;
  - f. 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
  - g. Any other relevant information it wishes the Office to consider.
8. The Respondent filed its response to the complaint *via* a letter dated 8<sup>th</sup> April 2024.
9. 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**

10. The complaint relates to the alleged contacting of the Complainant by the Respondent regarding a loan that he was not a party to.

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

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

11. The Complainant stated that on 1<sup>st</sup> March 2024, the Respondent constantly harassed and threatened him through his phone despite the fact that he has never given his contacts to them. The Respondent used mobile phone numbers 0718\*\*\*\*43, 0796\*\*\*\*80, a hidden number with 'No caller ID' and several others, which the Complainant ignored, to contact him. The Complainant provided screenshots of his call log as proof.
12. The Complainant stated that the harassment and threats have caused him psychological torture and stress. They have also caused him irreparable embarrassment on his reputation as a manager at his organization.
13. Further, the Complainant alleged that he was bombarded with several calls that affected his daily duties in serving his customers, which has caused so many calls to be abandoned therefore negating service delivery.
14. The Complainant prayed for damages for the psychological torture and stress suffered as well as for loss of business caused by the interference of his work schedule.

## ii. THE RESPONDENT'S RESPONSE

15. The Respondent confirmed that the Complainant does not have a loan with its company.
16. The Respondent stated the Complainant's phone number was supplied to it by its customer, Ms. V\*\*\*\*\* C\*\*\*\*\* R\*\*\* to its agent during the loan repayment collection process, as her secondary contact when her primary number was unavailable. The Respondent provided a screenshot from its agent's collection application system as proof. There was no indication from the said screenshot that the Complainant's mobile number was provided by its customer.
17. Further, the Respondent stated that the Complainant had not given his consent to use his number, as it was mistakenly provided by the customer.
18. In Addition to the above, the Respondent stated that its policy strictly prohibits agents from auto-redialing phone numbers and that the agent involved has been disciplined accordingly.
19. The Respondent stated that it has since contacted the Complainant and apologized for the data breach. The Respondent attached a screenshot of a message sent to the Complainant as proof.
20. The Respondent prayed for the complaint to be withdrawn since the Complainant's personal data was not in its system and the Complainant is not registered in its system.
21. In conclusion, the Respondent stated that it is finalizing with the process of shutting down its operations.

## F. INVESTIGATIONS UNDERTAKEN

22. The Office scheduled a site visit at the Respondent's premises on 3<sup>rd</sup> May 2024 to carry out further investigations into the matter.
23. On 1<sup>st</sup> May 2024, the Respondent wrote to this Office indicating that its Offices are closed and therefore the scheduled site visit will not proceed as planned.

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24. On 3<sup>rd</sup> May 2024, investigation officers from the Office visited the Respondent's Offices located at Top Plaza, Kindaruma Road at 10.00 am, to conduct further investigations into the matter and ascertain whether their offices were closed as alleged in their email dated 1<sup>st</sup> May 2024.
25. Investigation Officers visited their Offices and found them locked. Upon inquiry from the security guards manning the building, investigation officers found out that the Respondent was still in operation and had only closed for the day. Investigation officers were further informed that the Respondent's employees reported to work on the material day of the site visit and were all sent away by 8.30am. This indicates a choreographed move to intentionally derail the investigations.
26. This act of deliberately obstructing investigations amounts to obstruction of the Data Commissioner contrary to Section 61 of the Act.
27. The Office notes that the Respondent is a repeat offender, having obstructed investigations into a similar complaint; *ODPC Complaint No. 135 of 2024 - Austin Opalla vs Mulla Pride Limited*.

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

28. It is not in contention that the Respondent contacted the Complainant regarding a loan that he was not party to.
29. In light of the above, the following issues fall for determination by this Office:
- i. Whether there was a violation of the Complainant's rights under the Act;
  - ii. Whether the Respondent had obligations to fulfil under the Act; and
  - iii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

**I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT**

30. Section 26(a) of the Act provides for the right to be informed of the use to which a data subject's personal data is to be put. The Respondent, by not informing the Complainant of the use to which his personal data was to be put, at the point of collection of the personal data, violated his right to be informed. The Respondent collected the mobile phone number of the Complainant from its customer and did not inform the Complainant that his personal data was being collected. The Respondent did not also inform the Complainant that his mobile phone number was being collected for the purpose of being enlisted as a secondary contact to its customer and did not give the Complainant an opportunity to consent to the enlisting.

31. From the above, this Office finds that the Complainant's right under Sections 26(a) of the Act was violated by the Respondent.

**II. WHETHER THE RESPONDENT HAD OBLIGATIONS TO FULFIL UNDER THE ACT.**

32. 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 their right to privacy;
- ii. processed lawfully, fairly and in a transparent manner in relation to the data subjects;
- 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.

33. In collecting personal data, the Respondent is mandated by Section 28(1) of the Act to collect the data directly from the data subject. Section 28(2) sets out instances where personal data may be collected indirectly. The Respondent did

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not demonstrate that any of the conditions set out in Section 28 (2) were relevant in this matter.

34. Further, 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. the third parties whose personal data has been or will be transferred to, including details of the safeguards adopted; and
- v. a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data.

35. The Respondent had a duty to notify the Complainant of his rights under the Act, the fact that his mobile phone number was being collected for purposes of enlisting him as a secondary contact to a loanee, and the measures it has in place to ensure the safety of his personal data. The Respondent failed to fulfil this obligation under Section 29 of the Act.

36. Section 30 of the Act states 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. The Respondent admitted to having not obtained consent from the Complainant before processing his personal data.

37. From the above, this Office finds that the Respondent did not fulfil its obligations provided for under the Act.

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

38. 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.

39. 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."*

40. The Respondent by derailing investigations into the complaint 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 8<sup>th</sup> April 2024, requested the Office to carry out further investigations into the matter. It is also worth noting that the Respondent is a repeat offender, having deliberately obstructed investigations into a similar complaint lodged with the Office.

41. 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.

42. In addition, and having found that the Respondent violated the Complainant's rights provided for under the Act, and that it did not fulfill its obligations provided for under the Act, the **Office hereby orders for an enforcement notice to be issued against the Respondent.**

43. Further, and having found the Respondent liable for violating the Complainant's right to be informed under Section 26(a) of the Act, the Respondent is hereby **ordered to pay the Complainant Kenya Shillings two hundred and fifty thousand (KES 250,000) as compensation.**

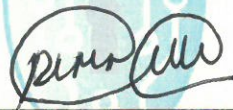
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## H. FINAL DETERMINATION

44. 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 of the use to which his personal data is to be put.
- ii. An enforcement notice to issue to the Respondent.
- iii. 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.
- iv. The Respondent is hereby ordered to pay the Complainant **Kenya Shillings two hundred and fifty thousand (KES 250,000)** as compensation.
- v. 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**

