



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 978 OF 2024

NJERI JOMO.....COMPLAINANT

-VERSUS-

AZURA CREDIT 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 Complainant filed a complaint on 3rd July, 2024 alleging that she has been receiving incessant calls from the Respondent, regarding a loan that she was not a party to and had not consented for her mobile number to be listed and used as a reference number.

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 COMPLAINT

6. This Office received a complaint from the Complainant on 3rd July 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by 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 17th July 2024 and referenced ODPC/CONF/1/5 VOL II(42). 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 whether the mobile phone number 07*****54 belongs to it or its agents;
 - d. The legal basis relied upon to process and engage with the Complainant's personal data;

- e. Proof of consent from the Complainant to call her numerous times;
 - f. A detailed description of how it fulfills 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 *via* a letter dated 6th August, 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 Complainant alleged that she was contacted by the Respondent regarding a loan that she was unaware of and had not consented for her mobile number to be listed and used as a reference number.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant alleged that she has been receiving incessant calls from a lady claiming to represent the Respondent. She provided screenshots of her call logs as proof.
12. Further, the Complainant stated that the calls originate from the number 07*****54 and are received daily at 12:45 PM. The caller alleges that a member of the Complainant's staff, named D*****, borrowed money from the Respondent and provided her number as a reference.
13. The Complainant stated that despite repeated requests for these calls to cease, she has been met with insults and threats from the caller.
14. It was the Complainant's averment that she has received over 2,000 calls, which have severely impacted her ability to use her phone.

15. The Complainant requested for the calls to stop immediately, deletion of her personal information from the Respondent's records, and for appropriate sanctions be imposed on the Respondent to prevent such unprofessional conduct in the future.

ii. THE RESPONDENT'S RESPONSE

16. The Respondent stated that it operates its business in line with the law and based on the industry best practices for data security and privacy. Further, it complies with all the relevant data protection regulations and strives to maintain the highest standards in privacy and communication practices.

17. The Respondent averred that it does not intentionally or systematically call persons with no loans and that the allegations about harassment of a client *via* mobile phone calls are new to it.

18. The Respondent stated that it cannot contact any person who has never borrowed a loan from them since they do not have any of their information. Further, the Respondent stated that it only obtains client's information during the registration process, which is the only way for it to obtain anyone's information. Once a client clears their pending loan, its collection system is designed in a manner that automatically removes them from the collector's portfolio.

19. The Respondent stated that the only authorized time for it to call a client is when the client is in default of their loan repayment. It also does not disclose the client's private information to third parties. Its Terms and Conditions clearly state that the client's personal data obtained during the debt application process will not be disclosed or communicated to any third party.

20. The Respondent averred that it conducted an investigation with the help of Safaricom and confirmed that the number 07*****54 that contacted the Complainant belongs to P**** K***** who is not associated with it and has never been its employee. Further, the Respondent requested this Office to conduct further investigations into the matter.

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F. INVESTIGATIONS UNDERTAKEN

21. The Office analysed the complaint as lodged, reviewed the response submitted by the Respondent and analysed all the documents submitted by the parties as evidence.
22. The Office noted that the screenshots adduced by the Complainant could not directly link the numbers to the Respondent thereby necessitating further investigations to ascertain whether the numbers belonged to, or were operated by the Respondent and/or its agents.
23. The Office conducted a site visit at the Respondent's premises on 30th August 2024 to carry out further investigations into the matter.
24. The Office sought to examine the Respondent's database to verify whether the Complainant's personal data and the mobile phone number that was used to contact her was present in its database.
25. The Respondent despite having been notified of the impending site visit, derailed and hindered the investigations by claiming that the ICT personnel with access to the backend of its database was not available to facilitate an examination of the Respondent's loan application. This act amounts to obstruction of the Data Commissioner contrary to Section 61 of the Act.

G. ISSUES FOR DETERMINATION

26. In light of the above, the following issues fall for determination by this Office:
 - i. Whether the mobile phone number that contacted the Complainant belongs 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 NUMBER THAT CONTACTED THE COMPLAINANT BELONGS TO THE RESPONDENT

26. The Complainant produced screenshots of her call log indicating that mobile phone number 07*****54 allegedly belonging to the Respondent contacted her regarding a loan that she was not a party to.

27. 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 phone number that contacted her belonged to the Respondent.

28. 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's personal data was in its database and whether the said mobile phone number that contacted the Complainant belonged to the Respondent.

29. In the absence of evidence linking the subject mobile phone number that contacted the Complainant and the Complainant's name and number to the Respondent, the Office cannot attribute the said number to the Respondent.

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

30. 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.

31. 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."

32. The Respondent by **intentionally** not availing a representative from its ICT team to facilitate the examination of the backend of its loan application obstructed the Data Commissioner in the exercise of her powers.

33. 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.

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

H. FINAL DETERMINATION

35. 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 30th day of September 2024.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

