



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1430 OF 2024

SALAUDDIN YOUSUF KHAN.....COMPLAINANT

-VERSUS-

AZURA CREDIT LIMITED.....1ST RESPONDENT

MULLA PRIDE LIMITED.....2ND 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 lodged a complaint on 17th September, 2024 alleging that he has been receiving numerous calls and emails from the Respondents, regarding a loan that he was not a party to and had not consented to be listed as a referee/ emergency contact person.

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 17th September 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 Respondents of the complaint filed against them *vide* a letter dated 11th November 2024 and referenced ODPC/CONF/1/5 VOL II(297). In the Notification of the Complaint, the Respondents were informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondents were asked to provide this Office with the following: -
 - a. A response to the allegations made against them by the Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. Their contractual obligation with the Complainant, if any;
 - d. Details of how they obtained the Complainant's personal data;

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- e. A detailed procedure on how data subjects can exercise their data protection rights;
 - 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 they wish the Office to consider.
8. The Respondents were non-responsive and did not submit a response to the Notification of Complaint. Regulation 11(2) of the Enforcement Regulations states that, *"where a respondent does not take any action as contemplated in the notification of complaint, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and the Enforcement Regulations."*
9. This determination is therefore as a result of analysis of the complaint as received and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The Complaint relates to the alleged use of the Complainant's personal data, being his mobile phone number and email address, to contact him regarding a loan that he was not a party to and had not consented to be listed as a referee/emergency contact person.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant alleged that on 10th August 2024, NextGen Pharmaceuticals (K) Ltd received an email from representatives of KeCredit Tech Limited, Azura Credit Limited and Mulla Pride Limited alleging that one of the Company's employees, Ms. B***** O***** had taken a loan facility with them which was in arrears.
12. The Complainant responded to the said email in an attempt to verify the claims and sought to know the identity of the lenders. The said representatives of the Respondents responded to the Complainant's email revealing the names of their Companies whereupon NextGen Pharmaceuticals (K) Ltd. Executive Director,

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Mr. Salauddin Yousuf Khan (the Complainant), confirmed that NextGen Pharmaceuticals (K) Ltd. was neither a party to the alleged loan arrangement nor was it aware of the details thereof.

13. Despite establishing that the alleged loan had been solely procured by NextGen Pharmaceuticals (K) Ltd.'s employee in her private capacity and without any involvement of the Company as her employer, the Respondents' agents embarked on a concerted campaign to incessantly call and threaten the Pharmaceutical through its office line. When they could not speak to the front office personnel, they resorted to calling the personal phone number it's Executive Director, Mr. Salauddin Yousuf, the Complainant herein.
14. The phone calls, running into hundreds in a day, persisted for more than one week. As of the date of lodging this complaint, NextGen Pharmaceuticals (K) Ltd. and the Complainant had received hundreds of threatening phone calls and messages through the following phone numbers: 079*****90, 071*****17, 070*****50, and several other unknown numbers.
15. The callers threatened to report the Complainant for failing to pay his employee's salary (which is false), thus in turn causing her to fail to clear her loan balance.
16. The Complainant averred that despite attempts by his legal counsel to engage the callers on the phone, no civil conversation could take place as the callers repeatedly shouted "*B***** alipe deni*" and immediately hang up the calls.
17. The Complainant averred that his legal counsel issued two cease and desist notices to the Respondents but the threats continued in blatant disregard of the law leaving the Complainant with no option but to lodge this complaint.
18. The Complainant stated that he has been receiving hundreds of distressing and threatening phone calls per day from 10th August 2024 through his private phone number and the office line, causing him mental anguish and rendering him helpless and unable to carry on with his usual business.
19. Further, the Respondents' agents incessantly called the Complainant with threatening messages while continuously hiding their caller ID.

20. The complainant sought the following remedies from this Office:

- i) A directive stopping the Respondents through their employees, agents and staff from contacting and threatening him and NextGen Pharmaceuticals (K) Ltd. who have no relationship whatsoever with the Respondents;
- ii) A finding that the Respondents have infringed upon his rights protected by the Constitution of Kenya, 2010 and the Data Protection Act, 2019 by invading his privacy and using his personal contact information for illegal purposes; and
- iii) Aggravated damages for the distress suffered due to the Respondents' acts of harassment.

21. The Complainant provided the following documents in support his complaint:

- i) Screenshots of email correspondences between the Respondents and the Complainant.
- ii) Screenshots of his call log.
- iii) Cease and Desist Notices dated 16th August 2024 and 21st August 2024.

ii. THE RESPONDENTS' RESPONSE

22. The Respondents were non-responsive and did not submit a response to the Notification of Complaint. Therefore, the allegations made in the Complaint remain uncontroverted.

F. INVESTIGATIONS UNDERTAKEN

23. The Office analysed the complaint as lodged and the supporting evidence.

24. In determining the complaint, this Office will not consider the complaint by Nextgen Pharmaceutical (Kenya) Limited as it is not a data subject as defined in the Data Protection Act, 2019.

25. The Office found that between 10th August 2024, and 13th August 2024, the Complainant was copied on emails sent to various addresses belonging to Nextgen Pharmaceuticals (Kenya) Limited. These emails contained information

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about the loanee, Ms. B***** O*****, and her loan obligation with the Respondents, urging the Complainant to advise the loanee to repay her loan.

26. Although the emails were directed to Nextgen Pharmaceuticals (K) Ltd., the Complainant, who is a Director at the Company, was copied on the said emails. His identity is identifiable as his email included his name.

27. This Office also found that the Respondents made multiple calls to the Complainant's personal mobile phone number regarding Ms. B*****'s loan.

G. ISSUES FOR DETERMINATION

28. It is not in contention that the Respondents contacted the Complainant.

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 Respondents fulfilled their obligations 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. The Complainant alleged that he has been receiving incessant calls and emails regarding a loan that he is not a party to. He provided screenshots as proof.

31. 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 Respondents collected the mobile phone number and email address of the Complainant from its customer and did not inform him that his personal data was being collected. The Respondents did not also inform the Complainant that his personal data was being collected for the purpose of being listed as a referee/emergency contact to a loanee, and did not give the Complainant an opportunity to consent to the listing.

32. The Respondents, 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.

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33. Section 26(c) of the Act provides for the right to object to processing of personal data. The Complainant objected to the processing of his personal data *via* a Cease and Desist Notice dated 16th August 2024.

34. The Respondents ought to have complied with the Complainant's request and stopped contacting the Complainant. The Respondents intentionally and/or negligently ignored the Complainant's objection and continued contacting him even after he had objected to the processing of his personal data.

35. From the foregoing, this Office finds that the Respondents violated the Complainant's right to be informed and his right to object to the processing of his personal data.

II. WHETHER THE RESPONDENTS FULFILLED THEIR OBLIGATIONS UNDER THE ACT

36. The Respondents 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.

37. In collecting personal data, the Respondents are 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 Respondents collected the Complainant's personal data from a third party and did not demonstrate that any of the conditions set out in Section 28(2) were applicable in this matter.

38. 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.

39. The Respondents had a duty to notify the Complainant of his rights under the Act, the fact that his mobile phone number and email address was being collected for purposes of listing him as a referee/emergency contact to a loanee, and the measures they had in place to ensure the safety of his personal data. The Respondents failed to fulfil this obligation under Section 29 of the Act.

40. 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 Respondents processed the Complainant's personal data without obtaining consent from the Complainant.

41. From the above, this Office finds that the Respondents did not fulfil their obligations provided for under the Act.

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

42. 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.

43. The Complainant prayed for a directive stopping the Respondents through their employees, agents and staff from contacting and threatening him as he has no relationship whatsoever with the Respondents. **The Respondents are hereby ordered to immediately stop contacting the Complainant regarding the said loan that he was not a party to.**

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44. The Complainant also sought aggravated damages for the distress suffered due to the Respondents' acts of harassment.
45. Section 65 of the Act provides for compensation to data subjects and states, "*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.*"
46. Section 65(4) of the Act states that, "*damage includes financial loss and damage not involving financial loss, including distress.*"
47. Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
48. In considering whether to issue compensation, this Office takes into consideration the fact that the Respondents either intentionally or negligently violated the Complainant's right to be informed and his right to object to the processing of his personal data. The Office also considers the fact that the Respondents did not fulfill their obligations under the Act. **The Office hereby orders the Respondents, jointly and severally, to pay the Complainant Kenya Shillings Five Hundred Thousand (KES. 500,000/=) as compensation.**

H. FINAL DETERMINATION

49. The Data Commissioner therefore makes the following final determination: -
- i. The Respondents are hereby found liable for violating the Complainant's right to be informed of the use to which his personal data was to be put, his right to object to the processing of his personal data, and for failing to fulfil its obligations under the Act.
 - ii. The Respondents are hereby ordered to immediately stop contacting the Complainant regarding the said loan that he was not a party to.
 - iii. An enforcement notice to hereby be issued to the Respondent.

- iv. The Respondents, jointly and severally, are hereby ordered to pay the Complainant **Kenya Shillings Five Hundred thousand (KES 500,000)** 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 13th day of December 2024.

