



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1139 OF 2024

PATRICK ODHIAMBO PAMBA.....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 (Complaints Handling Procedure and Enforcement) Regulations, 2021)

A. INTRODUCTION

1. The Complainant filed a complaint on 29th July, 2024 alleging that he has been receiving phone calls and emails from the Respondents and/or their agents regarding a loan that he did not apply for.

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 29th 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 29th August 2024 and referenced **ODPC/CONF/1/5/Vol II (145)**. 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 email address *****200@gmail.com 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 contact him *via* email and call;
 - 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 was non-responsive and did not respond to the Notification of Complaint filed against it. 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 concerns the alleged contacting of the Complainant by the Respondent regarding a loan that he did not apply for.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant alleges that the Respondent *via* its agents has consistently and persistently engaged in acts of harassment concerning a loan obligation that is not attributable to him. The Complainant asserts that he has no contractual relationship with the Respondent, nor has he ever entered into or subscribed to any loan services offered by the Respondent. The Respondent's actions are unjustified and unwarranted, given the complete absence of any legal or financial obligation on the part of the Complainant.
12. The Complainant further asserts that the Respondent's actions, which constitute harassment, arise from the illegal and unlawful collection,

processing, and use of his personal data, in clear violation of applicable data protection laws and regulations. The Complainant further states that at no point did he provide consent for the collection or processing of his personal information, nor is there any legitimate basis for the Respondent's access to or use of such data.

13. As evidence, the Complainant furnished the Office with;

- i) Written executed statement.
- ii) Emails sent from *****200@gmail.com.

ii. THE RESPONDENT'S RESPONSE

14. The Respondent was non-responsive and did not respond to the Notification of Complaint filed against it. Therefore, the allegations levelled against it remain uncontroverted.

F. INVESTIGATIONS UNDERTAKEN

15. The Office analysed the complaint as lodged and reviewed the documents submitted by the Complainant as evidence.

16. The Respondent despite having been notified of the complaint against it; willfully failed, refuses and/or neglected to comply with the notice issued and also give a conclusive response to this Office in regards to the complaint.

G. ISSUES FOR DETERMINATION

17. 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.

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

18. The Complainant alleged that he has been receiving calls and emails regarding a loan that he did not apply for.
19. 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 failing to inform the Complainant at the point of collection about the intended use of his personal data, violated the Complainant's right to be informed, as guaranteed under the Act. The Respondent unlawfully collected the Complainant's personal email address from a third party without providing the Complainant with any notice that his data was being collected. Moreover, the Respondent failed to inform the Complainant that his personal data, specifically his email address, was being collected for the purpose of listing him as a referee or emergency contact for one of the Respondent's customers. The Complainant was neither made aware of this specific processing purpose nor provided any opportunity to consent to such use of his personal data.
20. From the above, this Office finds that the Complainant's right under Section 26(a) of the Act was violated by the Respondent.

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

21. 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.

22. 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 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 relevant in this matter.

23. 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.

24. The Respondent had a duty to notify the Complainant of his rights under the Act, the fact that his email address was being collected for purposes of enlisting him as a referee/emergency 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.

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

26. 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.

27. 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.

28. As a remedy, the Complainant seeks an immediate and permanent cessation of all contact from the Respondent through any means, including but not limited to emails, phone calls, text messages, or any other form of communication, in relation to any legal and/or financial obligations of third parties to which the Complainant is not a party.

29. Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 further contemplates, as a remedy, the issuance of enforcement notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto.

30. Having found that the Respondent violated the Complainant's right to be informed, 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.

H. FINAL DETERMINATION

31. The Data Commissioner therefore makes the following final determination: -

- i. The Respondent is hereby found liable.
- ii. An enforcement notice to hereby be issued to the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 28th day of October 2024.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

