



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1189 OF 2024

ALFRED KANDIE TALLAM.....COMPLAINANT

-VERSUS-

UKRISTO NA UFANISI SACCO 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 17th August, 2024 alleging that he has been receiving loan payment demand messages addressed to one of the Respondent’s customers, despite the fact that he had requested the Respondent to stop sending the said messages.

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 August 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 3rd September, 2024 and referenced ODPC/CONF/1/5 VOL II(151). 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 his personal data in loan processing and repayment;

- 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 responded to the Notification of Complaint letter *via* a letter dated 11th September, 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 is regarding the alleged sending of messages to the Complainant demanding payment of a loan disbursed to one of the Respondent's customers.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant alleged that he has been receiving loan payment demand messages addressed to M**** M***** N**** from the Respondent. He provided screenshots of the messages received as proof.
12. The Complainant stated that he called the Respondent on mobile number 07*****79 and asked them to delete his number from their database but they continued to send him the messages. The Complainant also contacted the Respondent, *via* X formerly Twitter, regarding the matter. He provided screenshots of the tweet where he had tagged the Respondent as proof.
13. Additionally, the Complainant also contacted the Sacco Societies Regulatory Authority (SASRA) for assistance regarding this matter. He provided screenshots of the messages sent, *via* X formerly Twitter, as proof.
14. The Complainant also stated that he blocked the Respondent's messages and requested Safaricom PLC to assist him block the messages but he still receives

the demand messages from the Respondent. He provided screenshots of messages sent, *via* X formerly Twitter, as proof.

15. The Complainant stated that he is fearful of wrongful attachment of his assets in case the defaulter refuses to pay the loan.

16. In conclusion, the Complainant sought the following remedies: -

- a) Immediate stoppage of messages forthwith.
- b) Immediate removal of his number from the Respondent's database.
- c) Compensation amounting to KES 6,000,000 for the distress, mental anguish and embarrassment caused by the Respondent's actions.

ii. THE RESPONDENT'S RESPONSE

17. The Respondent stated that it has no knowledge and makes no admission of the allegations in their totality.

18. The Respondent stated that it is learning for the first time about the complaint and the fact that the Complainant is the registered owner of the subject mobile number that it has been utilizing to reach the borrower, Mr. M**** M***** N****.

19. The Respondent further stated that it is a Savings and Credit Society (Sacco) regulated by the Sacco Societies Regulatory Authority (SASRA) and offers credit facilities to its members.

20. Further, the Respondent stated that one of the requirements for the advancement of a credit facility is that the borrower must provide contact details in which the Respondent can utilise to reach the borrower for various reasons including and not limited to demanding for repayment of the loan facilities in case of default by the borrower.

21. The Respondent averred that it only contacts the borrowers and relevant parties using the contact details voluntarily disclosed to it in the Loan Application Forms and the platforms utilised for mobile banking.

22. The Respondent averred that that the mobile phone number 07*****28 was voluntarily disclosed to it by its borrower Mr. M**** M***** N**** through

his Membership Registration Form dated 7th May 2013 and Loan Application Form dated 29th June 2014. The mobile number was initially used to contact the borrower and was used by the borrower. Therefore, there was no reason for the SACCO to not believe that the information provided by the borrower was the correct information. Furthermore, there has never been any written correspondence addressed to the Respondent and/or proof thereof communicating to the Respondent the change of ownership of the mobile phone number either by its borrower or the Complainant herein. The Respondent provided a copy of the duly filled Membership Registration Form dated 7th May 2013 of Mr. M**** M***** N**** and a copy of the Loan Application Form and Agreement Form dated 29th June 2014.

23. Therefore, any messages sent to the Complainant were done in good faith and within the belief that the mobile phone number was registered against its borrower, Mr M**** M***** N****.
24. The Respondent stated that upon receiving the Notification of Complaint letter, it sought clarification from the borrower on the ownership of mobile number 07*****28 that he had provided to them. In addition, pending the clarification by its borrower, the Respondent committed to cease and desist from any further communication to the borrower using the subject mobile phone number.
25. As a futuristic mitigation response, in addition to the contents of the Loan Agreement in which the borrower confirms to them that the information provided to it is correct, the Respondent committed to communicate to the borrowers to provide them with any updated contact details in case of any change within seven days of such change.
26. The Respondent stated that it believes that it has complied with the Data Protection Act, 2019 and the attendant Regulations by developing a Data Protection Policy. The Respondent provided the policy as an attachment to its response.

F. INVESTIGATIONS UNDERTAKEN

27. The Office analysed the complaint as lodged, reviewed the response submitted by the Respondent and analysed all documents submitted by the parties as evidence.
28. The Office also conducted a site visit at the Respondent's premises. During the said site visit, the Respondent admitted to having sent loan payment demand messages to the Complainant's mobile phone number which was provided by its customer during the loan application process.
29. The Respondent confirmed that the mobile phone number, 07*****79, that the Complainant allegedly called belonged to them but was attached to one of their branches and not the head office.
30. The Respondent provided proof of having contacted the borrower, M**** M***** N****, to request him to provide them with his proper and correct contact details for communication purposes as required in the loan agreement.
31. The Respondent also provided a copy of the response from its customer M**** M***** N**** whereby he indicated that he had mistyped his contact information due to the fact that the mobile number was new and he hadn't mastered it correctly. He provided his correct mobile phone number and clarified that the one he provided in the registration form was not his number.

G. ISSUES FOR DETERMINATION

32. It is not in contention that the Respondent contacted the Complainant.
33. 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; and
 - ii. 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

34. The Office established that the Respondent's customer erroneously gave out the Complainant's mobile phone number during the registration and loan application process.
35. The Complainant was contacted regarding a loan obtained by one of the Respondent's customers.
36. Section 26(c) of the Act provides for the right to object to the processing of personal data. The Complainant objected to the processing of his personal data by calling the Respondent and reaching out to them on X, formerly Twitter.
37. The Respondent ought to have complied with the Complainant's request within fourteen days of the request as provided for under Regulation 8(3) of the Data Protection (General) Regulations, 2021 and stopped processing his personal data. The Respondent intentionally and/or negligently ignored the Complainant's objection and continued sending loan payment demand messages, even after the 14-day period provided under the above Regulation had lapsed. This is despite the fact that the Complainant had stated that he was not their customer and requested them to stop sending the said messages.
38. The Respondent, by continuing to send the loan payment demand messages even after the Complainant had objected to the processing of his personal data, violated his right to object to processing of his personal data.
39. 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.*"
40. The Complainant exercised his right of erasure by requesting the Respondent, via X formerly Twitter, to update its database. The Respondent did not act on the request for erasure and continued sending payment demand messages to the Complainant.

41. 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 for erasure and continued sending the said messages to the Complainant even after the 14-day period provided for under the above regulation had lapsed.

42. From the above, this Office finds that the Complainant's right to object and his right of erasure were violated by the Respondent.

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

43. 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.

44. The Complainant prayed for the immediate stoppage of messages and the immediate removal of his number from the Respondent's database. Investigation Officers during the site visit at the Respondent's premises, confirmed that this has been done.

45. The Complainant also prayed for compensation amounting to KES 6,000,000/= for distress, mental anguish and embarrassment caused.

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 Respondent either intentionally or negligently violated the Complainant's right to object and his right of erasure of personal data.

49. The Office declines to award the Complainant KES 6,000,000/= as prayed for as the amount is so inordinately high and an erroneous estimate of the damage.

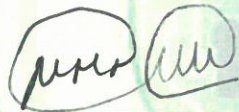
The Office hereby orders the Respondent to pay the Complainant **Kenya Shillings Five Hundred Thousand (KES. 500,000/=)** as compensation.

H. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable for violation of the Complainant's right to object to processing of his personal data and his right of erasure.
- ii. The Respondent is hereby ordered to pay the Complainant **Kenya Shillings Five Hundred Thousand (KES 500,000/=)** as compensation.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 14th day of November 2024.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

