



**OFFICE OF THE DATA PROTECTION COMMISSIONER
ODPC COMPLAINT NO. 1261 OF 2024**

DAVIES KIARIE CHEGECOMPLAINANT

-VERSUS-

WHITEPATH COMPANY LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Sections 8(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 alleges that the Respondent, without obtaining his consent or having any lawful basis, unlawfully collected and processed his telephone number for the purpose of recovering a loan that he neither took out nor was associated with in any way.

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 '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

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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 (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 22nd August 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was the 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 referenced ODPC/CONF/1/5/Vol II (158). In the notification of the complaint, the Respondent was informed that if the Complainant's allegations were true, they would be in violation of various sections of the Act. Additionally, the Respondent was asked to provide this Office with the following:
 - i. A response to the allegations made against them by the Complainant;
 - ii. A contact person who can provide further details as regards the complaint;
 - iii. Any relevant materials or evidence in support of their response above;

- iv. Their contractual obligation with the Complainant, if any;
 - v. Details on how they obtained the Complainant's personal data;
 - vi. A detailed procedure on how data subjects can exercise their data protection rights;
 - vii. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
 - viii. The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint do not take place again, if any;
 - ix. Any other relevant information you wish the Office to consider.
8. The Respondent responded to the allegations made against it vide a letter dated 19th September, 2024.

D. NATURE OF THE COMPLAINT

9. The Complainant alleges that the Respondent, without obtaining his consent or having any lawful basis, unlawfully collected and processed his telephone number for the purpose of recovering a loan that he neither took out nor was associated with in any way.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant claims that the numbers 07*****2, 0113*****8, 079*****3, 0114*****7, and 079*****2 have been sending him texts regarding an individual who had purportedly taken an online loan with the Respondent's agents, demanding that he contact the individual to facilitate repayment.
11. The Complainant alleges that the Respondent's agents have been sending numerous texts, with one sender dispatching 28 text messages within one hour.

12. The Complainant also alleges that the Respondent's agents had not consulted or sought his consent prior to involving him in the alleged transaction. Furthermore, the Complainant alleges that upon being unresponsive, the Respondent's agents resulted to the use of threatening, abusive, and inappropriate language.
13. The Complainant alleges that the excessive messaging has caused him reputational harm, and that the excessive and intrusive communication has significantly impaired his ability to perform his professional duties.
14. As part of his evidence, the Complainant furnished the Office with screenshots of the multiple messages received from the Respondent's agents and with time stamps.

ii. THE RESPONDENT'S RESPONSE

15. The Respondent, *via* a letter dated 19th September 2024, stated that upon notification of the complaint made against it by the Complainant, it initiated internal investigations, which it alleges that according to the results of its internal investigations, the Complainant is not and has never been its customer.
16. The Respondent acknowledged that the individuals involved were its agents. However, the Respondent admitted that it could not ascertain the source or manner in which these agents collected the Complainant's personal data, nor could it establish the legal basis for using his telephone number to recover a loan from one of their defaulters.
17. As part of its resolutions, the Respondent stated that it had terminated the employment contracts of the agents involved and is committed to ensuring that its processing activities align with applicable data protection laws, regulations, and guidelines.

F. ISSUES FOR DETERMINATION

18. In light of the above, the complaint, the Respondent's responses and evidence adduced, the following issues fall for determination by this Office:
- i. Whether the Respondent fulfilled its obligations under the Act; and

ii. Whether the Complainant is entitled to any remedies under the Act.

I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

19. The Complainant alleged that he has been receiving calls and emails from the Respondent and/or his agents regarding a loan that he did not apply for.
20. Section 29 of the Act imposes a duty on data controllers or processors to notify the data subject of key details relating to the processing of their personal data. Specifically, the Respondent was required to inform the Complainant of:
- a. The rights specified under Section 26 of the Act;
 - b. The fact that their personal data was being collected;
 - c. The purpose of the data collection, in this case, listing the Complainant as a referee or emergency contact for a loanee;
 - d. Any third parties to whom the personal data was transferred or would be transferred, along with the safeguards adopted to ensure the data's security; and
 - e. The technical and organizational measures in place to maintain the integrity and confidentiality of the Complainant's personal data.
21. An analysis of the Respondent's response and the evidence adduced to the Office, the Office finds that despite this statutory obligation, the Respondent failed to notify the Complainant of these critical details, breaching their duty under Section 29 of the Act.
22. Section 30 of the Act provides the lawful basis for processing personal data. It provides 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; or the processing is necessary for other purposes as set out in Section 30 (1)(b) of the Act.
23. The Respondent failed to demonstrate the lawful basis for processing of the Complainant's personal data to recover a loan from one of their defaulters.

24. Based on the above findings, this Office concludes that the Respondent did not process the Complainant's personal data lawfully and did not notify the Complainant of the processing of his personal data.

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

25. Pursuant to Regulation 14(2) of the Enforcement Regulations, a determination shall state the remedy to which the Complainant is entitled. The remedies are provided for in Regulation 14(3) of the Enforcement Regulations.

26. The Complainant requested that the Office orders the Respondent to immediately and permanently cease all contact with him.

27. Section 58 of the Act as read with Regulations 14 and 16 of the Enforcement Regulations further contemplates, as a remedy, the issuance of an enforcement notice against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto.

28. In light of the above and having found that the Respondent did not fulfill its obligations as provided for under the Act, the Office hereby orders for an enforcement notice to be issued to the Respondent.

G. FINAL DETERMINATION

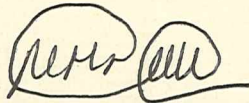
29. In consideration of all the facts of the complaints, the evidence tendered and the investigations conducted, the Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. An Enforcement Notice is hereby issued to the Respondent.

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- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this th 19 day of November 2024



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

