



**OFFICE OF THE DATA PROTECTION COMMISSIONER**  
**ODPC COMPLAINT NO. 1276 OF 2024**

**PETER KHAEMBA.....COMPLAINANT**

**-VERSUS-**

**AVENTUS TECHNOLOGY 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 alleged that the Respondent unlawfully processed his personal data without his consent by contacting him through calls and messages, demanding that he reach out to unknown individuals regarding unpaid loans allegedly obtained from the Respondent, of which the Complainant had no prior knowledge.

**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 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 25<sup>th</sup> August 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant who is 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 24<sup>th</sup> September, 2024 referenced ODPC/CONF/1/5 VOL II (198). 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:
  - a) A response to the allegations made against them by the Complainant;
  - b) A contact person who can provide further details as regards this complaint;

- c) Any relevant materials or evidence in support of their response above;
- d) A detailed description of whether they fulfil the duty to notify under Section 29 of the Act and how the same is fulfilled;
- e) Evidence as to whether the Complainant consented to processing of their personal data;
- f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
- g) Any other information you wish the Office to consider.

8. The Respondent responded to the allegations made against it *vide* a letter dated 30<sup>th</sup> September, 2024.

#### **D. NATURE OF THE COMPLAINTS**

9. The Complainant alleged that the Respondent unlawfully processed his personal data without his consent by repeatedly contacting him *via* calls and messages, demanding that he communicate with unidentified individuals concerning unpaid loans purportedly linked to the Respondent, which the Complainant asserts he had no prior knowledge of or involvement in.

#### **E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

##### **i. THE COMPLAINANT'S CASE**

10. The Complainant asserted that the Respondent repeatedly contacted him through persistent and intrusive phone calls regarding loans purportedly granted to unknown individuals, which the Complainant claimed to have no prior knowledge or involvement.

11. The Complainant further alleged that despite notifying the Respondent's representatives on multiple occasions that he had no relationship with or obligations to the alleged loans, the Respondent failed to take reasonable steps to verify the accuracy of the information linking him to these loans. This deliberate or negligent failure resulted in continued misdirected and unwarranted communication.

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12. The Complainant reported that during these interactions, the Respondent's agents engaged in unprofessional conduct, including the use of derogatory language and the issuance of threats, thereby escalating the harassment and causing additional distress.
13. The Complainant contended that the Respondent's conduct demonstrated gross negligence in handling personal data and a clear disregard for the principles of lawful data processing. The Complainant further alleged that the Respondent's actions constituted a breach of applicable data protection laws and regulations, raising serious concerns about the misuse of his personal information and causing him significant emotional distress and psychological trauma.
14. As evidence, and in support of his allegations, the Complainant adduced, call logs and audio recordings of calls from the Respondent's agents using different phone numbers to contact him persistently on diverse dates between 31<sup>st</sup> July 2024 and 26<sup>th</sup> August 2024.

#### **ii. THE RESPONDENT'S RESPONSE**

15. The Respondent, *via* a letter dated 30<sup>th</sup> September 2024, submitted a response to the notification of complaint made against it by the Complainant.
16. The Respondent submitted that the Complainant is its customer, and that the Complainant's personal data was lawfully collected upon receipt of his loan application on 10<sup>th</sup> August 2023.
17. The Respondent pleaded that it received an official complaint from the Complainant on 25<sup>th</sup> August 2024 through its Customer Service team where the Complainant was informed that an internal investigation in to the matter had been initiated.
18. The Respondent submits that the Complainant sought to file a complaint with this Office on the same day he notified the customer service team, that is, on 25<sup>th</sup> August 2024. That the Complainant did not allow the Respondent sufficient time to conclude its internal investigations and resolve the matter amicably.

19. The Respondent further averred that the Complainant consented to the processing of their data upon downloading the mobile application. The Respondent relied on Clause 2.6 of its terms and conditions which they state is a public document and in custody of all its customers including the Complainant, informing the customers of the consent to collect and process their personal data.
20. The Respondent stated that as a mitigation measure, the Complainant has since been blacklisted in all its systems and would not receive any communication going forward.
21. In support of its statement of response, the Respondent annexed screenshots of five messages on the WhatsApp platform, demonstrating their continued engagement with the Complainant to address his complaint, as evidence.

#### **F. INVESTIGATIONS UNDERTAKEN**

22. The Office reviewed the documentation availed by the parties, including the complaint lodged by the Complainant, the Respondent's Response and the evidence in support of the complaint and the response.
23. Upon analysis of the adduced evidence on record and the law, it was established that the audio files of call recordings ranging from 31<sup>st</sup> July 2024 to 26<sup>th</sup> August 2024 as submitted by the Complainant confirms that he received calls from agents of *Lendplus*, a loan product of the Respondent, inquiring about the whereabouts of an alleged defaulter and requesting the Complainant to inform her to repay her loan.
24. The calls were persistent and from different numbers, despite the Complainant advising the callers that he does not know the alleged defaulter.
25. The Complainant initially objected to the processing of his personal data through a phone call conversation with the Respondent's agent on the 31<sup>st</sup> of July 2024. No evidence has been availed by the Respondent to demonstrate that this right was given effect to.
26. The Respondent did not furnish the Complainant with further information or communication regarding the objection to the processing of his personal data.

## **G. ISSUES FOR DETERMINATION**

27. In light of the above, the complaint, the Respondent's response and the investigations conducted, the following issues fall for determination by this Office:

- i. Whether the Respondent fulfilled its obligations under the Act;
- ii. Whether there was a violation of the Complainant's rights under the Act; and
- iii. Whether the Complainant is entitled to any remedies under the Act.

## **I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT**

28. The Complainant alleged that he has been receiving calls regarding a loan that he did not apply for nor guarantee.

29. Section 25 of the Act, outlines the principles of data protection, including the requirement that personal data must be processed lawfully, fairly, and in a transparent manner in relation to the data subject.

30. Section 25(c) of the Act provides that every data controller or data processor shall ensure that personal data is collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes.

31. The Respondent stated that it collected the Complainant's personal data on 10<sup>th</sup> August 2023 when the Complainant sought for a loan from one of its products. The purpose of collection of the Complainant's data was for purposes of dispensing a financial facility to him *via* his mobile number and recovery of the monies thereof.

32. The Respondent, through its agents, reached out severally to the Complainant regarding an unknown loan awarded to a third party. In his statement, the Complainant submits that he was not party to the contractual agreement between the Respondent and the unknown third party, and neither had he consented to be listed as a guarantor or an emergency contact of the third party. The Respondent did not submit a rebuttal to this assertion.

33. The Respondent's actions were inconsistent with the purpose limitation principle, in that, the use of the Complainant's personal data to contact him about third-party loans was entirely unrelated to the purpose for which his personal data, that is, his telephone number was initially collected. This is in violation of Section 25(c) of the Act.

34. Further, Section 30(1) (a) of the Act 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. Section 30(1)(b) further provides that a data controller or data processor shall not process personal data, unless the processing is necessary –

- i. *for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract*
- ii. *for compliance with any legal obligation to which the controller is subject*
- iii. *in order to protect the vital interests of the data subject or another natural person*
- iv. *for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller*
- v. *the performance of any task carried out by a public authority*
- vi. *for the exercise, by any person in the public interest, of any other functions of a public nature*
- vii. *for the legitimate interests pursued by the data controller or data processor by a third party to whom the data is disclosed, except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject*
- viii. *for the purpose of historical, statistical, journalistic, literature and art or scientific research*

35. The Respondent has not demonstrated to this Office that the processing the Complainant's personal data for third party loan recovery falls within the requirements envisaged under Section 30(1) of the Act.
36. In addition, Section 30(2) of the Act provides that any further processing of personal data shall be in accordance with the purpose of collection. As established herein above, the purpose of collection was for advancing a loan to the Complainant in the year 2023. Further processing of his personal data was done in the year 2024 and for purposes of recovery of a defaulted loan from an unknown third party which is inconsistent and incompatible with the initial purpose of collection, in violation of Section 30(2) of the Act.
37. The Respondent sought to rely on an alleged consent contained in Clause 2.6 of its Terms and Conditions which informs the customer of the consent to collect and process their personal data. The Office finds that the same does not satisfy the conditions for consent as set out in Section 32 as read with Regulation 4 of the Data Protection (General) Regulations, 2021.
38. Based on the foregoing, the Office finds that the Respondent did not fulfil its obligations as envisaged under Sections 25(c), 30 (1) & 30(2) of the Act with regard to processing of the Complainant's personal data.

## **II. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT**

39. Section 26(a) of the Act provides, that a data subject has a right to be informed of the use to which their personal data is to be put. The Respondent submits that upon collection of the Complainant's personal data, in its terms and conditions, particularly Clause 2.6 informs the customer of the consent to collect and process their data.
40. The Complainant was not informed that his telephone number will be further processed to recover third party loans regardless of whether he is a listed guarantor/ emergency contact or not by a third party.

41. Further, Section 26(c) of the Act provides that a data subject has a right to object to the processing of all or part of their personal data.
42. Additionally, Section 36 of the Act states that a data subject has a right to object to the processing of their personal data, unless the data controller or data processor demonstrates compelling legitimate interest for the processing which overrides the data subject's interests, or for the establishment, exercise or defense of a legal claim.
43. On July 31<sup>st</sup>, 2024, the Complainant exercised his right to object to the processing of his personal data *via* a telephone call conversation with the Respondent's agent. The Complainant provided an audio recording of the conversation and correspondences with the Respondent as evidence of his requests for the complete cessation of processing his personal data in connection with debt recovery efforts for unknown third parties. However, the Respondent failed to provide the Office with evidence demonstrating compliance with the Complainant's request or that it had compelling legitimate interests for the processing which overrides the Complainant's interests, or for the establishment, exercise or defense of a legal claim..
44. The Respondent, in its statement of response, asserted that the Complainant did not provide sufficient time for an amicable resolution of the complaint. However, the Office noted that the Complainant first objected to the processing of his personal data on 31<sup>st</sup> July, 2024, via a phone call, and reiterated his objection on 25<sup>th</sup> August, 2024, through the Respondent's WhatsApp business page. Subsequently, the Office notified the Respondent of the complaint filed against it on 30<sup>th</sup> September, 2024. In this notification, the Respondent was granted an additional fourteen days to resolve the issue amicably and furnish the Office with evidence of resolution of the dispute between itself and the Complainant. The Respondent failed to provide this Office with supporting documentation or evidence demonstrating that it gave effect to the Complainant's right of objection to the processing of his personal data, or that it had resolved the dispute between themselves and the Complainant.

45. From the above, this Office finds that the Complainant's rights under Sections 26(a) & (c) of the Act were violated by the Respondent.

**III. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT.**

46. 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.

47. The Complainant requested that the Office direct the Respondent to cease and desist from contacting him and to delete his personal data from the Respondent's systems, databases, and all other records.

48. While the Respondent stated that the Complainant has since been blacklisted in all its systems and would not receive any communication going forward, no evidence was adduced to support this assertion.

49. Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 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.

50. Having found that there was a violation of the Complainant's rights as envisaged under Sections 26(a) & (c) of the Act, and further finding that the Respondent did not fulfill its obligations provided for under the Act, the Office hereby orders for an enforcement notice to be issued against the Respondent.

51. In so doing, this Office takes into account the nature and extent of violation with regard to processing of the Complainant's personal data in violation of the purpose limitation principle.

**H. FINAL DETERMINATION**

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

**DATED** at **NAIROBI** this 22<sup>nd</sup> day of November 2024



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**IMMACULATE KASSAIT, MBS**  
**DATA COMMISSIONER**

