



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0701 OF 2025

ANNE ARINA.....COMPLAINANT

-VERSUS-

BESTCASH T/A ZURI CASH.....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 against the Respondent alleging the Respondent's unauthorized use of her information. The Complainant alleged that she has been receiving numerous incessant calls and messages from the Respondent demanding payment from her as a loan guarantor yet she has never guaranteed anyone loans with the Respondent.

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

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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 14th May 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by 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* letters dated 2nd July 2025. The notification letter was referenced ODPC/CIE/CON/2/1 (417). The Office in the said Notification of Complaint for the complaints requested the Respondent to furnish the Office with –
 - a) A response to the allegations made against it by the Complainant;
 - b) A contact person who can provide further details as regards the complaint;
 - c) Any relevant materials or evidence in support of its response above;
 - d) Details on how and why the Complainant's personal contact information was used in relation to a loan allegedly taken by a third party, including the names and roles of any personnel or third parties involved in processing or initiating such communications.
 - e) Any contractual or legal basis authorizing the use of the complainant's personal data for communications regarding a third party's loan;

NA

- f) Evidence as to whether the Complainant consented to the processing of their data;
 - g) The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint do not take place again; and
 - h) Any other information it wished the Office to consider.
8. In the interest of fair justice, and pursuant to Regulation 11 of the Data Protection (Complaints Handling Procedures and Enforcement) Regulations, 2021, the Office further informed the Respondent of the options of -
- a. Reviewing the complaint and summarily resolving the same to the satisfaction of the Complainant, or
 - b. Resolving the complaint through mediation, negotiation and/or conciliation, as the alternative dispute resolution (ADR) mechanisms provided for by the Act and the Regulations.
9. As at the date of this determination, the Respondent failed, refused, or neglected to respond to the Notification of Complaint.
10. This determination is therefore pursuant to Regulation 11(2) of the Enforcement Regulations which provides that where a Respondent does not take any action as contemplated in law, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and these Regulations.

D. NATURE OF THE COMPLAINT

11. The Complainant alleged that he has been receiving numerous incessant calls and messages from the Respondent demanding payment from her as a loan guarantor yet she has never guaranteed anyone loans with the Respondent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

12. It was the Complainant's case that she has continuously been receiving lots of calls and text messages from the Respondent terming her as a referee to the Respondent's client who had defaulted in repaying the Respondent's loan.

13. The Complainant contended that she was never informed or consulted by the Respondent when they engaged their client. She further stated her consent was never procured to allow them to spam her with incessant and unwarranted calls.

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.

H. ISSUES FOR DETERMINATION

15. The following issues falls 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.

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

16. As earlier stated the complaint relates to the unauthorized processing of the Complainant's personal data, by the Respondent. The Complainant alleged that she has been receiving incessant calls from the Respondent demanding loan repayments from him yet he has never guaranteed any loans with the Respondent.

17. The Complainant further contended that the Respondent never informed and or consulted her to agree to be a guarantor to the Respondent's client, when they engaged their client.

18. Section 30 of the Data Protection 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 set out in Section 30 (1)(b) of the Act.

19. The Respondent did not respond to the Complainant's contention that she was not informed prior to making her a guarantor. It did not provide evidence to the contrary. As such it remains uncontroverted that the Respondent did not dispense

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away with its duty to notify the Complainant prior to processing her personal data as required by Section 29 of the Act.

20. This Office therefore finds that as far as issue no **(I)** is concerned, the Respondent did not process the Complainant's personal data lawfully and did not notify the Complainant of the processing of her personal data.

II. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES.

21. 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.

22. The Complainant requested this Office to award her damages for the unlawful sending of the messages to her by the Respondent and the incessant calls occasioned upon her by the Respondent.

23. Section 65 (1) of the Act provides for compensation to a data subject and states that 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. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.

24. Regulation 14 (3) (e) of the Enforcement Regulations further provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

25. Having found that the Respondent did not inform the Complainant prior to obtaining her personal data and it went ahead to process the same unlawfully the Respondent is hereby directed to compensate the Complainant, the sum of **KES 200,000/- (Two Hundred Thousand Kenya Shillings Only)**.

26. Having found that the Respondent failed to fulfill its obligations under the Act and attendant regulations, **an Enforcement Notice** shall issue against the Respondent pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

G. FINAL DETERMINATION

27. In the ultimate, the Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable;
- ii. The Respondent is ordered to compensate the Complainant, the sum of **KES 200,000/- (Two Hundred Thousand Kenya Shillings Only)**.
- iii. An enforcement notice to hereby be issued to the Respondent.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 11th day of August 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**