



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1880 OF 2024

YASIN ABUKAR.....COMPLAINANT

-VERSUS-

WANANCHI GROUP (KENYA) LIMITED T/A

ZUKU FIBRE KENYA.....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 Office received a complaint on the 18th November 2024 against the Respondent alleging that the Respondent has failed to delete the Complainant’s personal data despite repeated requests to do so.

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 18th November, 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 9th December, 2024 and referenced ODPC/CONF/1/5/VOL II (360). 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. A contact person who can provide further details as regards the complaint.
 - c. Provide any relevant materials or evidence in support of the response.
 - d. The legal basis relied upon to process and engage with the Complainant's data.
 - e. A statement outlining an opt-out mechanism as provided by Regulation 16 of the Data Protection (General) Regulations, 2021.

- f. A detailed description of how they fulfill 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.
 - h. Any other relevant information it wishes the Office to consider.
8. The Respondent responded to the said notification *via* email on 20th December 2024.
9. This determination is therefore 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 Complainant claimed that the Respondent failed to erase his personal data despite multiple requests. The Complainant claimed that he had stopped being the Respondent's client years ago, but the Respondent continued to send him promotional messages despite his verbal, phone, and email requests for the Respondent to delete his personal information from its systems and databases.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. It was the Complainant's case that he submitted the complaint against the Respondent for failing to delete his personal data despite repeated requests.
12. The Complainant contends that he ceased to be a customer of the Respondent years ago and has since made verbal, phone, and email requests for the erasure of his personal information, which the Respondent has ignored.
13. The Complainant further stated that on 16th November 2024, he attempted to escalate the issue formally via email to the address listed on their website, but the email address was invalid, and his message was undelivered.
14. The Complainant also contends that the ongoing retention and misuse of his personal data violates his rights under the Data Protection Act, 2019, including the right to erasure and the right to object to the processing of personal data for

marketing purposes. To him the continued retention of his personal information increases the risk of unauthorized access or misuse, exposing him to potential fraud or identity theft.

15. The Complainant stated that the repeated unsolicited calls and communication have caused inconvenience and distress and a lack of responsiveness erodes trust in the company's data handling practices.
16. To further demonstrate his fruitless attempts, the Complainant stated that he has attempted to address the matter directly with the company multiple times, but no meaningful action has been taken.
17. The Complainant further reiterated that he attempted to escalate the issue *via* email, but the address provided on their website was invalid.
18. The Complainant contended that as late as 15th December 2024, when the complaint had already been lodged, he received an email from Wananchi Group (Zuku) titled "Service Auto Suspension Notification."
19. As part of his evidence, the Complainant adduced proof of an attempted data deletion request *via* the email posted on the website.

ii. THE RESPONDENT'S RESPONSE

20. In its response, the Respondent stated that upon receiving the complaint, they conducted a comprehensive review of their records and systems and found out that they did not receive any data deletion requests from an individual bearing the name of the Complainant through any of their communication channels.
21. Further, the Respondent contended that they have maintained robust systems to ensure compliance with the DPA and prioritize the rights of data subjects, including the right to erasure.
22. The Respondent stated that they would be pleased to reassess the matter promptly. However, in the absence of a record or a formal deletion request, they regretfully must conclude that the allegation is not substantiated.
23. Subsequent to the site visit conducted by the Office, the Respondent provided a response confirming that the Complainant subscribed to their services on 2nd June,

2016 and that the last payment by him was on 10th December, 2022. They stated that the last call made to the Complainant was on 29th August, 2023 and that the records indicate that the Complainant has never visited their offices to lodge any request for service termination or data deletion nor has he ever formally requested the deletion of their personal data, either physically or through any of their Official communication channels.

24. The Respondent maintained that the email addresses provided on their official website are accurate, operational, and regularly monitored. They have never received complaints regarding non-functionality. They stated that the same channels were successfully used by this Office to contact them, and they duly responded.

F. INVESTIGATIONS UNDERTAKEN

25. In view of the Complainant's complaint, the evidence adduced and the Respondent's response, it was necessary to conduct further investigations to this complaint, thereby prompting an on-site visit to the Respondent to establish the veracity of the Respondent's assertions.

26. Pursuant to Sections 57 and 60 of the Act as read together with Regulation 13(1) (e) of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 obtained a search warrant to be able to search, investigate and obtain information from the Respondent's digital and manual records, system(s) and database (s) with respect to the complainant.

27. On 11th February 2025, investigators from the Office went to the Respondent's premises for purposes of conducting the investigations.

28. Despite having the search warrant giving them access to the Respondent's premises, digital and manual records, system(s) and database (s), the Respondent's employees and/or agents denied this Office access to the digital and manual records pertaining to the investigation.

29. The Respondent was uncooperative and refused to comply with the court order granting the Office access to search the Respondent's premises, digital and manual records, system(s) and database(s).

30. Faced with the lack of cooperation by the Respondent, the Office was not able to verify the Respondent's assertions, particularly that they did not have the Complainant's records. As such, the Respondent's response to the complaint herein remained to be mere denials.
31. By the Respondent's actions of disregarding the court order and denying access to this Office as per the search warrant, the Respondent obstructed the Data Commissioner which is an offence under Section 61 of the Act.
32. In a letter dated 31st January, 2025, the Respondent reiterated their position as outlined in their prior response to the lodged complaint. Specifically, they requested additional information to enable them to identify the Complainant within their systems.
33. This Office *via* mail dated 6th February 2025 provided the Respondent with information required to identify the Complainant.
34. This Office unsuccessfully attempted to send an email to the Respondent's email provided in their Data Protection and Privacy Policy for purposes of exercising data protection rights, that is, dataprotection@wananchi.co.ke.
35. Notably, this email address is different from the email addresses this Office used to communicate with the Respondent, that is, dataprotection@ke.wananchi.com, info@ke.wananchi.com, h***.*****o@ke.wananchi.com, y*****.*****a@ke.wananchi.com and support@zukufibre.co.ke.
36. The Office further notes that the Complainant received an email from the Respondent's email address, billing@zukufibre.co.ke titled "Service Autosuspension Notification" on 15th December, 2024, after the Complainant lodged this Complaint.

G. ISSUES FOR DETERMINATION

37. The following issues therefore fall for determination by this Office:
- i. Whether there was an infringement of the Complainant's rights under the Act and its attendant regulations; and

- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS AN INFRINGEMENT OF THE COMPLAINANT'S RIGHTS UNDER THE ACT AND ITS ATTENDANT REGULATIONS

38. Section 26 (c) of the Act outlines the rights of a data subject to object to the processing of all or part of their personal data.
39. Section 36 of the Act further provides, *inter alia*, 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.
40. Section 26 (e) of the Act provides for the right to deletion of false and misleading data. Section 40 (1)(b) provides 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 authorised to retain, irrelevant, excessive or obtained unlawfully.
41. From the evidence adduced, the Complainant wrote an email to the Respondent on 16th November, 2024, asking the Respondent to stop sending him the unsolicited communications and to immediately delete his personal data which is no longer necessary for the purpose for which it was collected.
42. The Complainant attempted to exercise his right to object to the processing of his personal data and his right to delete his personal data which the Respondent was no longer authorized to retain. However, the Complainant was unable to do so due to the Respondent's defective e-mail contact channel. His email was undeliverable.
43. Whilst the Respondent distances itself from the infringement of the Complainant's rights aforementioned, the investigations conducted by this Office proved the contrary. In a bid to establish the functionality of the e-mail communication channels provided, the Office attempted to use the channels but the said channel was invalid and non-operational.
44. This Office therefore finds that the Respondent was denied an avenue to exercise his right to object to the processing of his personal data by the Respondent and

his right to deletion of misleading data provided in Section 26(a) of the Act and Section 26 (e) as read with Section 40(1)(b) of the Act, respectively, thereby violating his aforementioned rights.

45. Further, regarding the other contentions as stated earlier under Section F of this Determination, the Respondent obstructed the Data Commissioner as the Office was not able to verify the Respondent's assertions with regards to the complaint. As such, the Respondent's response to the complaint herein remained to be mere denials. No evidence was adduced to support its assertions.

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

46. Under 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. 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.

48. 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.

49. The Complainant claimed for the remedy of compensation against the Respondent. The Respondent did not respond to this prayer for the remedy of compensation.

50. Having found that by denying the Complainant the opportunity to exercise his data protection rights the Respondent violated the Complainant's right to object and right to erasure, and taking into account the conduct of the Respondent in this matter, the Respondent is hereby directed to compensate the Complainant a total of **Kenya Shillings Five Hundred Thousand only (KES 500,000)**.

51. In addition to the Respondent contravening the provisions of the law as espoused above, the Respondent also committed offences stipulated in Section 61 of the Act. The Respondent's actions of refusing to abide by the search warrant and refusing to cooperate with the Data Commissioner, obstructed the Data Commissioner in relation to the exercise of her powers as enshrined under Section 9 of the Act.

52. Section 61 of the Act provides as follows –

A person who, in relation to the exercise of a power conferred by section 9 –

(a) obstructs or impedes the Data Commissioner in the exercise of their powers;

(b) fails to provide assistance or information requested by the Data Commissioner;

(c) refuses to allow the Data Commissioner to enter any premises or to take any person with them in the exercise of their functions;

(d) gives to the Data Commissioner any information which is false or misleading in any material aspect,'

commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both.

53. As such we are guided accordingly, and we hereby recommend the prosecution of the Respondent's directors for obstructing the Data Commissioner, an offence under Section 61 of the Act.

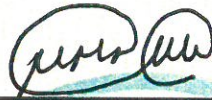
G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable for violating the Complainant's right to object to the processing of his personal data and his right to erasure.
- ii. The Respondent is hereby ordered to delete the Complainant's personal data from its systems, stop contacting him and avail proof thereof to this Office within 7 days from the date of this determination.

- iii. The Respondent is ordered to compensate the Complainant a total of Kenya Shillings **Five Hundred Thousand only (KES 500,000)**
- iv. A recommendation for prosecution is hereby made against the Respondent's directors for obstructing the Data Commissioner, an offence under Section 61 of the Act;
- v. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 15th day of February 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

