



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0886 OF 2025

ZAHIRA NINAH MWALIMU.....COMPLAINANT

-VERSUS-

JOSHUA MISARO.....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 alleges that the Respondent, a cybercafé operator, unlawfully processed her personal data without consent or any lawful basis. She claims the Respondent, after being given her documents for printing, uploaded them onto Scribd, making them publicly accessible.

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 29th June, 2025. 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 16th July, 2025 referenced ODPC/CIE/CON/2/1(468). 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 detailed response to the allegations made by the Complainant;
 - b) A contact person who can provide further details;
 - c) Any relevant materials or evidence in support of the statement of response above;
 - d) Lawful basis relied upon to process the Complainant's personal data.
 - e) Evidence as to whether the Complainant consented to her personal data being published online.
 - f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;

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- g) Any other relevant information.
8. The Respondent furnished the Office with its statement of response on 5th August, 2025.

D. NATURE OF THE COMPLAINT

9. The Complainant alleges that the Respondent, who operates a cybercafé offering browsing, printing, scanning, and related services, unlawfully processed her personal data without her consent or any other lawful basis. Specifically, the Complainant avers that she entrusted the Respondent with her deed poll and supporting affidavits for the limited purpose of printing. However, the Respondent allegedly uploaded these documents onto the Scribd online platform, thereby making them publicly accessible and exposing her personal data to unauthorized disclosure.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant alleges that on or about 24th January 2025, she visited the Respondent's cybercafé, known as "Esla Kopi," operated by Joshua Misaru, for the purpose of printing certain documents.
11. She pleads that she forwarded the documents to the Respondent *via* WhatsApp after he personally requested her number, and subsequently effected payment for the printing through M-Pesa to a Paybill number displayed at the premises.
12. The Complainant states that she did not personally use any computer within the cybercafé, but that the Respondent personally handled and printed the documents while she waited at the door.
13. She contends that the documents included a sworn affidavit containing highly sensitive personal and family information prepared in support of her application for a legal name change.
14. The Complainant further alleges that upon conducting a search with the Business Registration Service, she established that the cybercafé operated under the registered

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business name Epots Technologies, owned solely by one [REDACTED], who therefore bears legal liability for its operations.

15. She pleads that the impugned affidavit was later uploaded onto the Scribd platform under the account name "Elsa Kopi," thereby unlawfully disclosing and publishing her personal data without consent or lawful basis.

16. The Complainant contends that upon confronting the Respondent on 19th March 2025, he admitted responsibility for the unlawful disclosure and agreed to compensate her with Kshs. 10,000/=

17. She asserts that both the Respondent, and the proprietor of Epots Technologies [REDACTED] are jointly and severally liable for the unlawful processing and disclosure of her personal data, and seeks appropriate remedies.

18. In support of her claim, the Complainant furnished documentary evidence comprising:

- i. an M-Pesa transaction message confirming payment for the printing services at the Respondent's cybercafé;
- ii. a screenshot showing her documents as uploaded on the Scribd platform under the username "eslakopi";
- iii. a handwritten settlement agreement allegedly executed by the Respondent; and
- iv. evidence linking the email address [REDACTED] to the Respondent's ordinary business operations.

ii. THE RESPONDENT'S RESPONSE

19. In his statement of response, the Respondent denies all allegations in the complaint and puts the Complainant to strict proof. He avers that he operates a cybercafé under the registered business name Epots Technologies and not "Esla Kopi," and therefore the complaint is ill-conceived and malicious.

20. The Respondent contends that there is no credible evidence linking him to the Gmail account [REDACTED] or to the Scribd platform. He maintains that the connection drawn by the Complainant is based solely on name resemblance, which is insufficient and

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legally untenable. He asserts that he neither owns nor has ever operated a Scribd account, and only came to know of the platform after being confronted by the Complainant.

21. The Respondent alleges that his cybercafé admits all walk-in clients, who access computers freely, and that the Complainant must have personally accessed one of the computers to transmit her own documents. He argues that the office WhatsApp number used to receive documents is open to the public and that documents are deleted after printing, thus it would be impossible for him or his staff to upload the Complainant's files. He further states that notices are displayed in the cybercafé warning clients to log out and delete their documents after use.
22. The Respondent states that he has no recollection of serving the Complainant on the alleged date and denies entering into any form of agreement to compensate her for the alleged breach. He disputes the authenticity of the purported agreement for payment of Kshs. 10,000, claiming that the signature is a forgery and that the document is invalid. He maintains that any letterhead documents produced were in response to unrelated client quotations and were mischievously misused by the Complainant.
23. The Respondent contends that there is no proof that the documents were uploaded from his systems or accounts. He notes that no forensic evidence, call records, or police report has been adduced to substantiate the Complainant's claims. He further avers that usernames and email addresses can be created by anyone, including the Complainant herself, and therefore reliance on screenshots and uncertified electronic evidence is unreliable and inadmissible.
24. The Respondent pleads that the allegations against him are defamatory, unsupported by factual or technical evidence, and are an attempt at extortion. He asserts that he upholds data protection practices and does not interfere with clients' personal activities unless expressly permitted. He therefore prays that the complaint be dismissed with costs, for want of proof, and because the claims are malicious, speculative, and without legal foundation.

F. ISSUES FOR DETERMINATION

25. In light of the above, the complaint, the Respondent's responses and evidence adduced together with the investigations conducted, the following issue falls for determination by this Office.

- i. Whether the Respondent unlawfully processed the Complainant's personal data in contravention of the Act.
- ii. Whether the Complainant is entitled to any remedies under the act.

I. WHETHER THE RESPONDENT UNLAWFULLY PROCESSED THE COMPLAINANT'S PERSONAL DATA IN CONTRAVENTION OF THE ACT.

26. Section 2 of the Data Protection Act defines a data controller as a person or entity that determines the purpose and means of processing personal data, and a data processor as a person or entity that processes personal data on behalf of a data controller.

27. In this case, when the Complainant engaged the services of Epots Technologies through the Respondent for the purpose of printing her documents, the Respondent assumed the role of a data processor within the meaning of the Act.

28. The Complainant's conduct of sharing her documents for printing, and thereafter deleting them from her end once the service was completed, is *prima facie* evidence that the purpose of processing was exhausted upon issuance of the printed copies. Accordingly, the Respondent's mandate was deemed discharged at that point, and any subsequent retention or use of the documents was outside the lawful scope of the original instruction.

29. The discovery of the Complainant's documents on the online platform Scribd, coupled with the Respondent's own defense that "clients have access to all computers" and that the email address [REDACTED] is openly accessible to attendants and customers, amounts to an admission of failure to implement accountability measures. This constitutes a breach of the statutory obligation of a processor to safeguard personal data in its custody.

30. Section 41 of the Act expressly imposes on both data controllers and processors a duty to implement appropriate technical and organizational measures, by design and by default,

to protect personal data and ensure that processing complies with the law. This responsibility cannot be abdicated to customers or casual users of the system.

31. Further, Section 25 of the Act requires that every data controller and data processor must ensure that personal data is:

- a) processed in accordance with the right to privacy of the data subject;*
- b) processed lawfully, fairly, and in a transparent manner; and*
- c) collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes.*

32. The affidavit furnished by the Complainant contained information relating to her mental health, family circumstances, and religious conversion. These categories fall squarely within the statutory definition of sensitive personal data under Section 2 of the Act, thereby requiring a heightened standard of protection.

33. The only lawful basis for processing the Complainant's sensitive data was to fulfill the specific contractual purpose of printing, as instructed. The subsequent act of uploading the same to a public platform such as Scribd constituted secondary processing that was unlawful, unfair, and lacking in transparency. No consent was sought or obtained from the Complainant nor was there any lawful basis for the repurposing of her personal data.

34. The uploading of the Complainant's personal data on Scribd was not compatible with the initial purposes of processing in blatant violation of the Act, and specifically the purpose limitation principle.

35. The Respondent's attempt to evade liability by asserting that multiple clients could access the same computers or email addresses is untenable. This Office notes that reliance on a "public notice" advising clients to log out or delete documents is insufficient to discharge statutory obligations. The primary duty to ensure the security of personal data rests with the data controller or processor, who must implement safeguards to render such data inaccessible once the processing purpose has been fulfilled.

36. In light of the foregoing, this Office finds that the Respondent, acting on behalf of Epots Technologies, bears liability for the unlawful processing of the Complainant's personal data. The Respondent failed in his statutory duties under Sections 25(a), (b), (c), and 41,

of the Act by unlawfully retaining, and further processing, the Complainant's personal data without consent or lawful basis.

37. Further, pursuant to Section 42(3) of the Data Protection Act, the Respondent, having processed the Complainant's personal data other than as instructed, is deemed to have acted as a data controller in respect of that unlawful processing. Accordingly, the Respondent assumes full legal responsibility for the unauthorized disclosure and publication of the Complainant's sensitive personal data.

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

38. 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.

39. As a remedy, the Complainant prays for an order compelling the Respondent to forthwith erase from his systems and online platforms associated with him or the cybercafe all personal data belonging to the Complainant, to guarantee that her personal data shall not be disclosed without her express consent or a lawful basis as provided under the Act, and for an award of monetary compensation to redress the unlawful processing of his data and the attendant harm suffered.

40. Section 65(1) of the Act provides, that a person who suffers damage by reason of a contravention of a requirement of this Act is entitled to compensation for that damage from the data controller or the data processor. Section 65(2) provides, a data controller involved in processing of personal data is liable for any damage caused by the processing.

41. Section 65(4) of the Act provides that "damage" includes financial loss and damage not involving financial loss, including distress.

42. Having established that the Respondent unlawfully processed the Complainant's personal data in contravention of Sections 25(a), 41 and Section 42 of the Act, this Office finds that the Complainant is entitled to compensation. Accordingly, the Respondent is hereby directed to pay the Complainant the sum of **Kenya Shillings One Hundred Thousand (KES 100,000)** as compensation.

43. In so doing, this Office takes into account the nature of the Respondent entity, the nature and extent of violation with regard to unlawful processing of the Complainant's personal data and the failure to process personal data in accordance with the principles of personal data.

G. FINAL DETERMINATION

44. 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 to issue to the Respondent.
- iii. The Respondent is ordered to compensate the Complainant **KES 100,000 (One Hundred Thousand Kenya Shillings)**.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 26th day of September 2025



**Immaculate Kassait, MBS
DATA COMMISSIONER**

