



**OFFICE OF THE DATA PROTECTION COMMISSIONER
ODPC COMPLAINT NO. 0981 OF 2025**

STEVE SANDE KAMWAMU.....COMPLAINANT

-VERSUS-

**NYATI SAVINGS AND CREDIT
COOPERATIVE SOCIETY LIMITED.....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 from the Complainant alleging that the Respondent unlawfully used his image and likeness in promotional posters for a loan product named 'Jiendeleze loan'.

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

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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 7th July 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainants on behalf of the aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the complaint filed against it. The notification of complaint to the Respondent was issued on 28th July 2025 vide letter referenced ODPC/CIE/CON/2/1 (509).
8. In the notification of the complaint, the Respondent was among other things 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 to the complaint;
 - c) Any relevant materials or evidence in support of the response above;
 - d) Details on how the Respondent obtained the Complainant's personal data;
 - e) The lawful basis relied upon to use the Complainant's image for commercial purposes;

- f) An elaborate representation of how data subjects can exercise their rights in relation to data protection;
 - g) Mitigation measures adopted or being adopted to address the dispute to the satisfaction of the Complainant and to ensure such occurrences do not recur.
 - h) Any other information that it may wish the Office to consider.
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 concerns the Complainant's allegations that the Respondent unlawfully used his image and likeness in promotional posters for a loan product named *Jiendeleze loan*.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

12. The Complainant stated that the Respondent published his image and likeness in posters across Facebook, Instagram, and Twitter on multiple dates between October and December 2022.
13. The Complainant asserted that the posters formed part of a commercial campaign introducing a loan product called *'Jiendeleze loan'*.
14. The Complainant maintained that the publications falsely suggested that he was an official partner or brand ambassador of the Respondent and alleged that this false association misled the public and damaged his reputation.
15. The Complainant emphasized that he had not consented to the use of his image for marketing purposes and that he had never submitted his photographs to the Respondent for use in advertising.

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16. The Complainant argued that the Respondent exploited his likeness for financial gain by promoting its loan product.

17. The Complainant further contended that his intellectual property and personality rights were misused through the unauthorized publications.

18. The Complainant asserts that he was neither an employee of the SACCO nor had any relationship with the SACCO rather, he came to know of the SACCO when a friend shared an X (formerly Twitter) post in which the SACCO had used his image to advertise their "Jiendeleze loan" program.

ii. THE RESPONDENT'S RESPONSE

19. 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.

F. ISSUES FOR DETERMINATION

20. In light of the above, the following issues fall for determination by this Office:

- i. Whether the Respondent obtained express consent from the Complainant to process his personal data for commercial purposes; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENT OBTAINED EXPRESS CONSENT FROM THE COMPLAINANT TO PROCESS HIS PERSONAL DATA FOR COMMERCIAL PURPOSES.

21. Section 2 of the Act defines consent as any manifestation of express, unequivocal, free, specific, and informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data.

22. 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.

23. The Act goes further to state the conditions of consent. It states as follows with regard to the conditions of consent:-

32. Conditions of consent

(1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.

(2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.

(3) the withdrawal of consent under sub-section(2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.

(4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on the consent of the processing of personal data that is not necessary for the performance of that contract. (emphasis ours)

24. From the evidence adduced to this Office, it is evident that at all material times when the Respondent was handling the Complainant's personal data, it required the Complainant's consent.

25. Despite being given an opportunity to respond to the Complaint, the Respondent did not file a response to the allegations brought by the Complainant. As stated above in paragraph 19 the Respondent was duly notified of the complaint and was required to respond to the allegations against it within the prescribed timelines contained in the notification letter. As such, the Complainant's allegations remain uncontroverted. The Respondent did not discharge its burden of proof as envisaged under Section 32 (1) of the Act.

26. On the issue of commercial use of personal data, the Act provides under Section 37 (1) (a) that a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person has sought and obtained express consent from a data subject.

27. Regulation 14 (1) of the General Regulations provides the interpretation of 'commercial purposes' and provides that for the purposes of Section 37 (1) of the Act, a data controller or data processor shall be considered to use personal data for commercial purposes where personal data of a data subject is used to advance commercial or economic interests, including inducing another person to buy, rent, lease, join, subscribe to, provide or exchange products, property, information or services, or enabling or effecting directly or indirectly, a commercial transaction.

28. The Complainant adduced evidence to demonstrate that the Respondent used his impugned image and likeness in posters. By publishing the Complainant's image on a poster ostensibly introducing the *Jiendeleze loan* product, the Respondent used the Complainant's image to advance commercial purposes contrary to Section 37 of the Act.

29. This Office therefore finds that as far as issue no (i) is concerned, the Respondent did not obtain express consent from the Complainant to process personal data for commercial purposes.

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

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

31. As his relief, the Complainant sought that he be compensated and that an order be issued restraining the Respondent from publishing and/or using his image and likeness in any way in its advertisement or posting and reposting his image in any way on its social media and website without his consent.

32. 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.

33.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.

34.Having found that the Respondent did not obtain consent from the Complainant to use his personal data for commercial gain, the Respondent is hereby directed to compensate the Complainant **KES 500,000/- (Five Hundred Thousand Shillings Only)**.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable for use of Complainant's image for commercial purposes without consent.
- ii. The Respondent is ordered to compensate the Complainant **KES 500 000/= (Five Hundred Thousand Kenya Shillings Only)**.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 3rd day of October 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

