



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0986 OF 2025

BOSCO OTIENO.....COMPLAINANT

-VERSUS-

BETIKA 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 Complainant alleges that the Respondent unlawfully restricted his right to erasure and deletion by conditioning account deletion on the provision of his national ID and three months' M-Pesa statements. He contends that these demands are unnecessary, intrusive, and amounted to an obstruction of his statutory rights.

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 27th 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 22nd July, 2025 referenced ODPC/CIE/CON/2/1(490). 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) Justification as to why a three-month Mpesa statement is required as a condition before complying with a request for deletion of account.
 - e) User data protection policy.

- f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
 - g) Any other relevant information.
8. The Respondent furnished the Office with its statement of response on 11th August, 2025.

D. NATURE OF THE COMPLAINT

9. The Complainant alleges that the Respondent engaged in unfair and unlawful processing of his personal data contrary to the Act. Specifically, the Complainant avers that upon exercising his right to deletion under Section 26(d) of the Act, the Respondent made compliance conditional upon the provision of three months' M-Pesa statements and a copy of his national identity card. The Complainant contends that these requirements were neither sought nor necessary at the point of account registration, and that demanding such additional personal data as a precondition for account deletion contravenes the principles of lawful processing, in particular the principles of purpose limitation and data minimization as set out under the Act.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant alleges that on 26th June 2025, he initiated a request *via* email to the Respondent for the permanent deletion of his account.
11. The Complainant alleges that in response, the Respondent required him to upload his national ID and three months' M-Pesa statements before effecting the deletion.
12. He contends that this demand violated the principle of data minimization, was unjustifiable, intrusive, and served as an obstruction to his right to erasure and deletion, while also creating a risk of potential misuse of his personal data.
13. The Complainant asserts that the Respondent's request failed to meet the threshold of necessity and proportionality under the Data Protection Act.
14. He pleads that the Office compels the Respondent to permanently delete his account and award him compensation for the violation of his rights.

15. As evidence, the Complainant attached correspondence between himself and the Respondent.

ii. THE RESPONDENT'S RESPONSE

16. In its statement of response, the Respondent states that on 26th June 2025, the Complainant requested deletion of his account. In response, the Respondent required him to provide a copy of his national ID and three months' mobile money statements to verify his identity and establish the source of funds transacted through its betting platform.
17. The Respondent asserts that the documents requested are necessary to comply with its regulatory obligations under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009, and related guidance by the Financial Reporting Centre. It contends that account closure constitutes a transaction requiring customer due diligence, including verifying identity and source of funds, in line with Section 45 of POCAMLA and the Anti-Money Laundering Regulations, 2023.
18. The Respondent pleads that its privacy policy and terms and conditions, which the Complainant accepted upon registration, clearly provide for submission of a national ID and verification processes during account closure. It adds that enhanced measures are necessary for online, non-face-to-face transactions to mitigate impersonation and money laundering risks.
19. The Respondent claims that requesting the Complainant's mobile money statements was proportionate, necessary, and consistent with data minimization, as it directly relates to verifying the source of funds and monitoring for suspicious activities. It emphasizes that such measures safeguard both the Respondent and the integrity of the financial system against money laundering and related risks.
20. The Respondent asserts that it has adopted mitigation measures, including restricting the Complainant's account pending compliance, ensuring continued data retention only for lawful purposes such as fraud prevention, regulatory reporting, taxation, and responsible gambling. It further affirms that robust security safeguards are in place to protect personal data and pleads that the Complainant be compelled to provide the requested documents to enable account deletion in line with statutory obligations.

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21. In support of its statement of response, the Respondent attached –

- i. Its user Terms and Conditions
- ii. The user Privacy policy
- iii. Hyperlinks to the Sports betting rules and Responsible Gaming Policy

F. ISSUES FOR DETERMINATION

22. 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 complied with the principles and obligations of lawful processing of personal data under the Act and attendant Regulations.
- ii. Whether the Respondent's conduct constituted a violation of the Complainant's rights as a data subject under the Act and the attendant Regulations.
- iii. Whether the Complainant is entitled to any remedies under the Act.

I. WHETHER THE RESPONDENT COMPLIED WITH THE PRINCIPLES AND OBLIGATIONS OF LAWFUL PROCESSING OF PERSONAL DATA UNDER THE ACT AND ATTENDANT REGULATIONS.

23. Section 25 of the Data Protection Act, 2019 imposes mandatory principles of lawful processing of personal data, requiring data controllers and processors to ensure that processing is undertaken lawfully, fairly, and transparently, for specified and legitimate purposes, and limited to what is necessary in relation to those purposes. It further requires that processing meet the standards of necessity and proportionality, and that personal data processing not be excessive in relation to the legitimate aims pursued.

24. In this complaint, the Complainant requested for the deletion of his account. He contended that the Respondent's demand for a copy of his national ID and three months' M-Pesa statements was unnecessary, intrusive, and contrary to the principle of data minimization, since such information was not required at the time of account registration. He further argued that conditioning deletion upon submission of this data amounted to an obstruction of his statutory right.

25. The Respondent, in its defense, asserted that its request was necessitated by obligations under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009 and the attendant Financial Reporting Centre (FRC) guidelines. It argued that account closure constituted a "transaction" within the meaning of Section 45 of POCAMLA, thereby obligating it to undertake customer due diligence, including verification of identity and source of funds. It further relied on its privacy policy and terms and conditions accepted at registration, which, in its view, provided for the collection of such documentation at account closure.
26. The central issue is whether the Respondent's demand for these documents satisfied the principles of data protection under the Act. While compliance with regulatory obligations such as POCAMLA may constitute a lawful basis for processing, such processing must still align with the principles under Section 25 of the Act as far as personal data processing is concerned.
27. In particular, the principle of data minimization under Section 25(d) requires that data controllers and data processors ensure personal data is adequate, relevant and limited to what is necessary in relation to the purposes for which it was processed. The principle of purpose limitation under Section 25(c) requires that personal data be collected for explicit, specified and legitimate purposes.
28. In the present circumstances, while requiring production of a national ID may be considered necessary and consistent with both POCAMLA and the Data Protection Act for purposes of verifying identity at account closure, the blanket demand for three months' M-Pesa statements was disproportionate, unnecessary, and inconsistent with the principle of data minimization. Such financial statements contain wide-ranging personal and financial information unrelated to the narrow purpose of account deletion. Their collection, absent any demonstrable suspicion or risk trigger, went beyond what was necessary and therefore failed the test of proportionality.
29. The Respondent's reliance on POCAMLA as a blanket basis for demanding financial data was unjustified. POCAMLA is to be applied within a risk-based framework, whereby reporting institutions calibrate their due diligence measures to the level of risk presented

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by a transaction or customer profile. In this case, the Respondent did not demonstrate the relevance, necessity or overriding legitimate interest in processing the Complainant's financial data for purposes of deletion of his account.

30. Consequently, the Respondent only partially complied with its obligations of lawful processing. While its request for national ID for purposes of identity verification was reasonable and proportionate, its demand for three months' M-Pesa statements lacked necessity, was excessive, and contravened the principles of data minimization and purpose limitation under Section 25 of the Act.

31. In light of the above, this Office finds that by the Respondent conditioning account deletion on the provision of such unnecessary data, the Respondent failed to fully comply with the principles data protection as required under Section 25(c) & (d) the Act.

II. WHETHER THE RESPONDENT'S CONDUCT CONSTITUTED A VIOLATION OF THE COMPLAINANT'S RIGHTS AS A DATA SUBJECT UNDER THE ACT AND THE ATTENDANT REGULATIONS.

32. The Act guarantees data subject rights under Section 26, including the right to correction of false or misleading data under subsection (d), and the right to deletion of false or misleading data under subsection (e). Further, Section 40(1)(b) provides that a data subject may request a data controller to erase or destroy personal data that is no longer authorized to be retained, irrelevant, excessive, or obtained unlawfully.

33. The Data Protection (General) Regulations, 2021, at Regulation 12, reinforce this right by permitting a data subject to request erasure of personal data where, among other grounds; the personal data is no longer necessary for the purpose for which it was collected, the data subject objects to the processing and there is no overriding legitimate interest to continue processing or the processing is unlawful.

34. The Complainant exercised his right to erasure by requesting permanent deletion of his betting account. The Respondent, however, conditioned this request on the provision of his national ID and three months' M-Pesa statements. This imposed an additional hurdle by demanding further documentation unrelated to the deletion request, ultimately, effectively restricting and delaying the Complainant's statutory right.

35. The investigation confirmed that the Complainant's account had been active for six years and had not been flagged for suspicious activity. The Respondent did not demonstrate an overriding legitimate interest under Regulation 12(1)(c) of the General Regulations that would justify continued retention or further processing. In the absence of such justification, the Complainant was entitled to have his erasure request acceded to without undue delay, upon submission of his national ID.

36. Based on the foregoing, the Office finds that the Respondent's conduct constituted a violation of the Complainant's rights under Sections 26 and 40 of the Act, and Regulation 12 of the Data Protection (General) Regulations, 2021. By conditioning erasure on the submission of additional documents without demonstrating an overriding legitimate interest, the Respondent unlawfully obstructed the Complainant's right to deletion and failed to comply with the statutory framework that protects data subjects from excessive or irrelevant processing.

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

37. 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.

38. As a remedy, the Complainant prays for an order compelling the Respondent to permanently delete his account, and for an award of monetary compensation for the unlawful restriction imposed in the exercise of his rights as a data subject and the attendant harm suffered.

39. 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.

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

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41. Having established that the Respondent failed to discharge its statutory obligations under Sections 25(d), 40(1)(b) and Section 26(e) 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 Two Hundred and Fifty Thousand (KES 250,000)** as compensation.

42. In addition, having found that the Respondent failed to process the Complainant's personal data in accordance with the data protection principles, an Enforcement Notice shall issue against the Respondent pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

43. In so doing, this Office takes into account the nature and extent of violation with regard to the unlawful restriction imposed on the Complainant in the exercise of his rights as a data subject 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 250,000 (Two Hundred and Fifty 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 ⁴⁷ 25 day of September 2025



Immaculate Kassait, MBS
DATA COMMISSIONER

