



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0722 OF 2025

MINAGE LUCY OMUFUMU.....COMPLAINANT

-VERSUS-

CHAPEO CAPITAL LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Sections 8(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 alleged that the Respondent collected and processed her personal data for loan recovery without a lawful basis.

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 20th May 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 5th June 2025 referenced ODPC/CIE/CON/2/1 (453). 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 response to the allegations made against them by the Complainant;
 - b) A response to the allegations made against you by the Complainant;
 - c) Any relevant materials or evidence in support of your response above, including internal policies governing loan recovery communication, third-party data handling, consent verification, and data privacy safeguards;

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- 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, if any;
 - f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
 - g) The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint do not take place again, if any;
 - h) Any other information you wish the Office to consider.
8. The Respondent responded to the allegations made against it *vide* a letter dated 6th August 2025.

D. NATURE OF THE COMPLAINTS

9. The Complainant alleged that the Respondent without a lawful basis or justified cause, sent numerous unsolicited calls and SMS messages from the respondent concerning a loan facility taken by an unknown third party which she states she had no knowledge of the individual or any related obligations.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant alleges that the Respondent, through various agents, has been sending him unsolicited text messages and phone calls over a loan defaulted by an unknown third party, who is purportedly a client of the Respondent.
11. She states that she did not at any point provide consent for her personal data to be used or shared for loan recovery purposes and was never notified of such intended use.

12. She alleges that even after blocking the Respondent's contact numbers, the communication persisted through alternative lines, including during weekends and at odd hours, amounting to harassment and an unjustified intrusion into her private life.
13. The Complainant contends that the Respondent's persistent and intrusive conduct has caused her undue stress and disrupted her peace and well-being.
14. In support of her complaint, the Complainant attached printed screenshots of the several text messages and call logs from agents of the Respondent.

ii. THE RESPONDENT'S RESPONSE

15. The Respondent alleges that it operates a money lending platform under the brand "ZK Pesa Loan".
16. The Respondent alleges that the complaint does not cite any actual breach of data protection laws. That the Complainant was contacted solely because she was listed as an alternative contact by W****i R**h a borrower, during a loan application on 17th May 2025 who defaulted, prompting outreach of the alternative contact, the Complainant herein.
17. The Respondent asserts that the use of the Complainant's contact information was not a misuse of personal data on the basis that the information was voluntarily provided by the loan applicant, and that the Respondent does not collect or retain data from guarantors, since their loans do not require formal guarantees.
18. The Respondent states that its customer relationships are governed by two primary documents: the Privacy Policy and the Terms and Conditions. These documents detail data processing procedures, repayment obligations, and user rights.
19. The Respondent alleges compliance with the Act by notifying customers at the point of data collection through its Privacy Policy, Terms and Conditions, and in-app notifications. Customers are informed of the purposes of data collection and their rights.

20. The Respondent further alleges compliance with Section 40(1) of the Data Protection Act, by providing mechanisms for customers to request correction or deletion of inaccurate personal data. These rights are embedded in both contractual and technical frameworks.

21. The Respondent alleges that in its opinion, although no breach occurred, it has taken proactive measures including refresher training for agents, stricter access controls, data minimization practices, a formal Complaints Handling Policy, and deletion of the Complainant's contact information from its systems to prevent further contact.

F. ISSUES FOR DETERMINATION

22. In light of the above, the complaint, the Respondent's responses and evidence adduced, the following issues fall 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 under the Act.

I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

23. The Complainant alleged that she has been receiving calls and messages from the Respondent and/or its agents regarding a loan that she did not apply for nor have any prior knowledge of.

24. Section 2 of the Act defines processing as any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation or use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure or destruction.

25. Section 25 of the Act provides that every data controller or data processor shall ensure that personal data is processed in accordance with the right to privacy of the data subject.

26. The Respondent as data controller and processor had a sole obligation to process the Complainant's personal data in accordance to the principles envisaged under Section 25 of the Act.

27. Section 29 of the Act imposes a duty on data controllers or processors to notify the data subject of key details relating to the processing of their personal data. Specifically, the Respondent was required to inform the Complainant of:

- a. The rights specified under Section 26 of the Act;
- b. The fact that their personal data was being collected;
- c. The purpose of the data collection, in this case, listing the Complainant as a referee or emergency contact for a loanee;
- d. Any third parties to whom the personal data was transferred or would be transferred, along with the safeguards adopted to ensure the data's security; and
- e. The technical and organizational measures in place to maintain the integrity and confidentiality of the Complainant's personal data.

28. An analysis of the Respondent's response and the evidence adduced to the Office, the Office finds that despite this statutory obligation, the Respondent failed to notify the Complainant of these critical details, breaching their duty under Section 29 of the Act.

29. Section 28(1) of the Act provides that a data controller or data processor shall collect personal data directly from the data subject. Section 28(2) further stipulates that personal data may be collected indirectly where, the data is contained in a public record, the data subject has deliberately made the data public, the data subject has consented to the collection from another source, the data subject has an incapacity, the guardian appointed has consented to the collection from another source, the collection from another source would not prejudice the interests of the data subject, collection of data from another source is necessary or the prevention, detection, investigation, prosecution and punishment of crime, for the enforcement of a law which imposes a pecuniary penalty and/or for the protection of the interests of the data subject or another person.

30. The Respondent failed to provide any supporting documentation or evidence to justify its actions and did not demonstrate to this Office the lawful basis for collecting and processing the Complainant's personal data, including its use for third-party debt recovery purposes.

31. Section 30 of the 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. Section 30(3) of the Act further provides that a data controller who contravenes the provisions of Section 30(1) commits an offence.

32. It remains uncontested that the Respondent collected and processed the Complainant's personal data for the purpose of third-party debt recovery. However, the Respondent failed to substantiate its actions by demonstrating a lawful basis for such processing, as required under the applicable law. In light of these findings, this Office concludes that the Respondent has not complied with its statutory obligations under the Act. Consequently, the Respondent's actions constitute a violation of the Complainant's right to privacy.

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

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

34. As a remedy, the Complainant requested that the Respondent erase his personal data from its records / systems and database and any other record and monetary compensation for the violation of his right as a data subject.

35. 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.

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

37. Having found that the Respondent failed to fulfil its obligations as per the Act, it then follows that the Complainant is entitled to compensation. The Respondent is hereby directed to compensate the Complainant **KES 50,000 (Fifty Thousand Kenya Shillings)**.

38. In so doing, this Office takes into account the nature and extent of violation with regard to unlawful processing of the Complainant's personal data and the conduct of the Respondent.

39. 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

40. 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. The Respondent is ordered to compensate the Complainant **KES 50,000 (Fifty Thousand Kenya Shillings)**.
- iii. An Enforcement Notice to hereby by issued against 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 8th day of August 2025



Immaculate Kassait, MBS
DATA COMMISSIONER