



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0732 OF 2025

JOSEPH GITHINJI KIMANICOMPLAINANT

-VERSUS-

PLATINUM CREDIT LIMITEDRESPONDENT

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 lodged a complaint with the Office on 22nd May 2025. He averred that staff from the Respondent unlawfully accessed and used his personal documents and data to process a loan application to the State Department for Technical and Vocational Education and Training (TVET) without his authorization or consent.

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 as '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 (hereinafter as '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 22nd May 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondents of the complaint filed against them *vide* a letter dated 19th June, 2025 and referenced ODPC/CIE/CON/2/1 (393). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, they were 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 them by the Complainant;
 - b. A contact person who could provide further details as regards to this complaint;
 - c. Any relevant materials or evidence in support of their response above;
 - d. Details of how they obtain, store and process personal data, and whether the Complainant consented to the processing of their data in the loan application process;

- e. The lawful basis relied upon to process and approve a loan using the Complainant's personal data;
 - f. An elaborate representation of how data subjects can exercise their rights in relation to data protection;
 - g. The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint does not take place again; and
 - h. Any other relevant information the Respondent wishes the Office to consider.
8. On 8th July 2025, the Respondent submitted to the Office a Response to the Notification of Complaint.
9. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.
10. This determination is therefore as a result of analysis of the complaint as received and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

11. It is the Complainant's assertion that the Respondent's staff unlawfully accessed and used his personal data and official documents to submit a loan application to the State Department for Technical and Vocational Training (TVET), his employer, without his knowledge or consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

12. The Complainant avers that in April and May of 2025, he discovered unauthorized salary deductions upon receipt of his pay-slips.
13. That he neither requested the said loan nor signed any application or loan agreement with the Respondent.
14. That the deductions began without any prior notice or engagement from the Respondent or TVET, and that he only learned of the loan after salary deductions had already occurred.

15. That the Respondent's actions constituted a gross violation of his rights and contravened key principles of data processing including; consent and purpose limitation, data minimization, fairness and protection against unauthorized access and misuse.

16. The Complainant sought the following remedies from this Office:

- i) An investigation into the Respondent for unlawful access and use of his personal data;
- ii) Appropriate regulatory action, penalties or sanctions be instituted against the responsible individuals and the Respondent;
- iii) That the respondent be directed to:
 - Provide a written explanation of how and why his data was processed without his consent;
 - Immediate refunds of all unlawful deductions from his salary for April and May 2025;
 - Reversal of the unauthorized loan balance imposed on his account;
 - Compensation for the financial loss and distress caused.
- iv) That the respondent be required to guarantee in writing that no further processing of his data will occur without his express, written consent

17. The Complainant provided copies of the affected pay-slips as well as letters written to both the Chief Principal at his workstation and the Director of Human Resource Management at the State Department for Technical and Vocational Training (TVET) to support their complaint.

ii. THE RESPONDENTS' RESPONSE

18. The Respondents submitted a response to the notification dated 8th July 2025 in which they averred as follows;

19. That they deny the allegations made by the Complainant and confirmed that there was no unlawful collection or processing of his personal data by their staff and put the Complainant to strict proof thereof.

20. That Complainant is an active customer who applied for and was granted a loan facility on 20th June 2024 via their USSD platform, using his own registered mobile number and credentials.
21. That the Complainant's loan has been partially performing, and to regularize the repayment schedule, they requested a deduction adjustment from the Payroll Officer at the State Department, to revise the monthly deduction from Kshs. 4,308 to Kshs. 4,403.
22. That the Payroll Officer actioned the adjustment, but due to a system issue on their end, the deduction of Kshs. 4,308 continued to be processed erroneously for the month of April.
23. That the Respondent issued a stop order to halt the deduction immediately upon discovery of the oversight, but failed to attach a copy of the stop order as they indicated.
24. That the Respondent noted that the payroll officer acknowledged the error and attributed it to a system glitch affecting their payroll processing and stated that their staff engaged the payroll officer to address the matter and that the officer advised the Complainant to liaise with them directly to resolve the issue.
25. That the deduction was not unlawful or fraudulent, and that the funds were applied toward the Complainant's existing loan arrears.
26. That the Respondent expressed regret that the Complainant failed to disclose material facts in his submission, particularly the existence of an active loan facility, and believed that this omission was deliberate and cast doubt on the good faith of the Complainant, suggesting an intention to unjustly benefit from the Complaint process.
27. That the Respondent affirmed their full commitment to complying with the Act and all applicable Regulations and stated that the information and documentation provided clarified the circumstances surrounding the complaint.

iii. STATEMENT BY MITUNGUU NATIONAL POLYTECHNIC

28. The Complainant's workstation, submitted a response to the Notice of site-visit dated 30th July 2025 in which they averred as follows;

29. That the Complainant is employed by the State Department for Technical and Vocational Training (TVET).

30. That all employment records and payroll related matters concerning the Complainant are maintained by the State Department for Technical and Vocational Training (TVET).

31. That they did not originate, forward or participate in any communications with either the Respondent or the State Department for TVET in relation to the Complaint, hence any letter purportedly associated with their institution and referenced in the case did not emanate from them.

F. ISSUES FOR DETERMINATION

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

- i. Whether there was a violation of the Complainant's rights under the Act and attendant regulations.
- ii. Whether the Respondent fulfilled its obligation under the Act.
- iii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

28. Section 26(c) of the Act provides for the right to object to processing of personal data. Further Section 36 of the Act states 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, or for the establishment, exercise or defence of a legal claim.*"

29. Regulation 8 further specifies *"that a data Subject may request a data controller or processor not to process all or part of their personal data, for a specified purpose or in a specific manner."*

30. In this case, the Complainant willfully consented to the processing of their personal data by applying for the loan facility via the Respondent's USSD platform.

31. Based on the above, this Office concludes that the Respondent did not violate the Complainant's right to object under Section 26 (c) of the Act.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

32. The Respondent is a data controller within the definitions of the Act and therefore has obligations pursuant to the Act.

33. Section 25 of the Act obligates every data controller or processor to process personal data in adherence to the set principles which includes inter alia;

- i. Processing lawfully, fairly and in a transparent manner in relation to data subjects; and
- ii. Collection for explicit, specific and legitimate purposes and no further processing in a manner incompatible with those purposes

34. To enable the Complainant to benefit from the Respondent's loan facility, the Complainant willfully gave their personal data during application via the Respondent's USSD platform. The Respondent processed the Complainant's personal data for the specific and legitimate purpose of according a loan facility to the Complainant.

35. The Respondent also issued to the Director of HR, at the State Department of Technical and Vocational Education and Training, a stop order to halt erroneous deductions occasioned by a system error on their side, to which the Director asked them to have the Complainant liaise with the State Department directly to have the issue resolved. This proves lawful, fair and transparent processing of the Complainant's personal data by the Respondent.

36. Section 30 of the Act stipulates 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. In this particular case, the Respondents processed the Complainant's personal data with the consent of the Complainant as required under section 30 and 32 of the Act.

37. The Office therefore finds that the Respondent fulfilled its obligations under the Act.

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

42. 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.

43. The Complainant requested this Office to issue an award of compensation. Section 65 of the Act provides 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. The Section indicates that damage included financial loss and damage not involving financial loss including distress.

44. Further, Regulation 14 (3) (e) of the Enforcement Regulations provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

45. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant failed to mention that there was an existing loan agreement between himself and the Respondent.

46. In light of the above the Office declines to award compensation in the circumstances.

47. The Office also finds that the Respondent fulfilled their obligations towards the Complainant.

G. FINAL DETERMINATION

48. The Data Commissioner therefore makes the following final determination: -

- i. The Complaint is dismissed.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 20th day of August 2025.



