



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0840 OF 2025

GLENDACH IENG ONYANGO.....COMPLAINANT

-VERSUS-

STAWIKA 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 who had a contractual relationship with the Respondent, alleges that the Respondent without prior notice, intentionally disclosed her personal data to third parties without any 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 10th 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 21st July 2025 referenced ODPC/CIE/CON/2/1 (480). 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 you by the Complainant and, a contact person who can provide further details as regards this complaint;
 - b) Provide any relevant materials or evidence in support of your response above;
 - c) The contractual agreement between yourselves and the complainant;
 - d) The lawful basis relied upon to share the Complainant's financial data to unauthorized third parties, if any;

- e) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant;
 - f) Any other information you wish the Office to consider.
8. The Office received the Respondent's response to the notification of complaint on 31st July 2025

D. NATURE OF THE COMPLAINT

9. The Complainant alleges that the Respondent, without providing her with prior notice, intentionally disclosed her personal data to third parties without any lawful basis. She contends that such disclosure was neither necessary for the performance of the contract nor authorized under any provision of the Act, and therefore amounted to an unlawful and unauthorized interference with her right to privacy.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant states that on or about 1st April 2025, she applied for a loan facility with the Respondent.
11. She further states that the agreement between herself and the Respondent did not stipulate specific due dates for the repayment instalments, thereby creating ambiguity regarding the repayment schedule. However, she undertook to repay the loan amount within three monthly instalments.
12. On or around 14th May 2025, the Complainant asserts that she received communication from third parties not privy to the contract. This communication was based on information that was only in the possession and control of the Respondent which she pleads was done without informing her or giving prior notice or reliant on any lawful basis.
13. As evidence, the Complainant furnished the Office with an extract of the email that was sent to unauthorized third parties on 16th May 2025.

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ii. RESPONDENT'S RESPONSE

14. The Respondent, in its Statement of Response, acknowledged that the Complainant was its client, having voluntarily applied for and obtained a loan facility pursuant to a Loan Agreement dated 1st April 2025.
15. The Respondent averred that Clause 2 of the said Agreement expressly provided that the borrower acknowledged and agreed to be bound by the applicable terms and conditions. It further submitted that such terms and conditions are duly published on its official website and are made accessible to all clients prior to loan disbursement.
16. In response to the allegation of unauthorized disclosure, the Respondent contended that all communication undertaken was in the ordinary course of business and solely for purposes of verifying inconsistencies identified during an internal review of the Complainant's facility application. The Respondent maintained that these actions were undertaken in pursuit of legitimate business interests, in the lawful enforcement of the contract, and in compliance with its internal regulatory and operational procedures.
17. The Respondent further submitted that all correspondence was limited, professional, and appropriate, and categorically denied disclosing the Complainant's personal data to any unauthorized third parties or engaging in conduct contrary to the provisions of the Data Protection Act.
18. Additionally, the Respondent confirmed that the loan facility matured on 30th June 2025 and remained outstanding as at the date of filing its Statement of Response. Nevertheless, the Respondent averred that it continued to approach the matter in good faith and remained amenable to engaging the Complainant towards an amicable resolution through a structured repayment plan.

F. ISSUES FOR DETERMINATION

19. 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's conduct constituted an unauthorized disclosure of personal data within the meaning of the Act.
- ii. Whether the Complainant is entitled to any remedies under the Act.

I. WHETHER THE RESPONDENT'S CONDUCT CONSTITUTED UNAUTHORIZED DISCLOSURE OF PERSONAL DATA WITHIN THE MEANING OF THE ACT.

20. Section 2 of the Act defines personal data as information relating to an identified or identifiable natural person. The inclusion of the Complainant's name in connection with default of payment squarely falls within this definition.
21. Section 2 also defines personal data breach as breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed.
22. Section 25 states, every data controller or data processor shall 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 in relation to any data subject;*
 - (c) *collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes;*
 - (d) *adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;*
 - (e) *collected only where a valid explanation is provided whenever information relating to family or private affairs is required*
23. The Complainant alleges that the Respondent intentionally and willfully disclosed her personal data to third parties without a lawful basis nor prior notice to her.
24. The Respondent states that it relied upon legitimate interest as its defense on the disclosure of the Complainant's personal data.

25. While debt recovery may constitute a legitimate interest, the purpose must still be exercised in a manner compliant with the Act. The Respondent had less intrusive alternatives at its disposal, including direct communication with the Complainant. Disclosure of personal information to an employer causes reputational damage, humiliation, and potential employment consequences, which are disproportionate and excessive compared to the Respondent's interest. The harm and risk to the Complainant's rights and freedoms far outweigh any purported commercial interest of the Respondent.

26. It is trite that legitimate interest as a lawful basis cannot override the fundamental rights of the data subject, which in this case include the right to privacy and protection from reputational harm. Accordingly, the Respondent's defense of legitimate interest cannot be sustained, and its disclosure of the Complainant's personal data to third parties including her employer remains unlawful, unfair, and unauthorized under the Act.

27. Based on the foregoing, this Office finds that the Respondent's conduct constituted to unauthorized and unlawful disclosure of personal data within the meaning of the Act.

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

28. According 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.

29. Having considered the merits of the complaint, the evidence adduced by both the Complainant and the Respondent, and having found that the Respondent unlawfully disclosed the Complainant's personal data to third parties without a lawful basis, it therefore, follows that there has been a violation of the Act by the Respondent to that extent.

30. 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.

31. 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.

32. The Complainant prayed for compensation for the violation incurred.

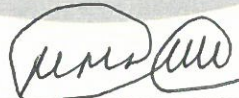
33. Having found that the Respondent unlawfully disclosed the Complainant's personal data, the Respondent is hereby directed to compensate the Complainant in the sum of **Kenya Shillings Fifty Thousand (Kshs. 50,000/=)**. In arriving at this award, this Office has taken into account the nature and extent of the violation, the harm occasioned to the Complainant, and the need to uphold the accountability under the Act.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable for unlawful disclosure of the Complainant's personal data to third parties;
- ii. The Respondent to pay the Complainant a sum of **KES 50,000/= (Kenya Shillings Fifty Thousand Shillings Only)** as compensation;
- iii. 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 September 2025



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

