



**OFFICE OF THE DATA PROTECTION COMMISSIONER  
ODPC COMPLAINT NO. 0841 OF 2025**

**FAITH WANJIKU WARURU.....COMPLAINANT  
-VERSUS-  
FARMERS CHOICE KENYA 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 complaint concerns the allegation that the Respondent used the Complainant's image on a print media and social media platform for commercial gain without her express consent or any other lawful basis thereof.

**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 10<sup>th</sup> 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 3<sup>rd</sup> July, 2025 referenced ODPC/CIE/CON/2/1 (426). 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 sections of the Act. Further, among other things, the Respondent was asked to provide this Office with the following:
  - a) A response to the allegations made by the Complainant;
  - b) Any relevant materials or evidence in support of the response, including the circumstances under which the Complainant's image was obtained and used, and any steps taken to seek or confirm consent;
  - c) Details on how the Complainant's image came to be used for commercial purposes on Instagram and in brochures, including the names and roles of any persons involved in the decision or publication process;
  - d) Any contractual or other form of agreement with the Complainant authorizing the use of her image for promotional or commercial purposes, if any;

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- e) Proof of consent from the Complainant permitting the use of her image, and any record of withdrawal of such consent, if applicable;
- f) The mitigation measures adopted or being adopted to address the complaint, including removal of the image from all platforms and materials, and steps taken to prevent future unauthorized use; and
- g) Any other information you wish the Office to consider.

The Respondent responded to the allegations made against it *vide* a letter received on 20<sup>th</sup> August, 2025.

#### **D. NATURE OF THE COMPLAINT**

- 8. The Complainant alleged that the Respondent processed her image without her consent for marketing and commercial purposes.

#### **E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

##### **i. THE COMPLAINANTS' CASE**

- 9. The Complainant alleges that on 19<sup>th</sup> April 2025, she discovered through an Instagram post that the Respondent was using her image in commercial advertisement brochures without her prior consent or authorization.
- 10. The Complainant pleads that the Respondent's unauthorized use of her image for commercial gain amounts to a violation of her constitutional rights.
- 11. The Complainant further states that, she formally demanded the immediate removal of the unauthorized image from all advertising materials, both print and digital, but the Respondent declined to comply. That through her advocates on record, she issued a demand letter seeking removal of the image from all commercial advertisements and compensation for its unauthorized use. To date, the Respondent has allegedly failed and/or refused to comply, thereby prompting the filing of this complaint.
- 12. As evidence, the Complainant furnished the Office with –

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- i. A copy of the demand letter issued to the Respondent requiring removal of the image.
- ii. Screenshots of the Respondent's Instagram story and feed containing the impugned images.

## ii. THE RESPONDENT'S RESPONSE

13. The Respondent states that the subject image featured in the brochure arose from a commercial engagement in which the Complainant participated and for which she received payment/consideration.
14. The Respondent pleads that the use of the Complainant's image was undertaken on the strength of consent and/or express authorization contemporaneous with the paid engagement, and that it reasonably relied on that authorization for the limited purpose of advertising its products through brochures and associated marketing collateral. It adds that records of the engagement, including proof of payment and accompanying documentation, substantiate this position.
15. The Respondent avers that upon being notified of the complaint and subsequent demand, it commenced an internal review to verify the underlying engagement, payment, and usage scope, and confirmed that the image had been deployed within the parameters of the commercial assignment as understood at the time. It underscores that any residual or downstream circulation (including re-shares or third-party reproductions) is outside its practical control.
16. The Respondent alleges that, without admission of liability and in good faith, it considered and/or undertook remedial steps aimed at cessation of any further use, including withdrawal or replacement of the impugned brochure where reasonably practicable, and instituted strengthened internal controls to ensure clearer documentation, approvals, and auditability for any future use of identifiable images in marketing.
17. The Respondent further states that, in light of the paid engagement and contemporaneous consent/authorization, any processing of the Complainant's personal data was lawful within the meaning of the Data Protection Act, 2019 particularly on

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the bases of consent and/or performance of a contract and therefore did not infringe the constitutional rights pleaded (Articles 28, 30, 31, and 40). It maintains that the allegations of unlawful processing and constitutional violation are unmerited.

18. The Respondent pleads that the complaint be dismissed for want of merit, there being no unlawful processing or continuing infringement once concerns were raised.

## **F. ISSUES FOR DETERMINATION**

19. In light of the above, the complaint, the Respondent's responses and evidence adduced together with the investigations conducted, the following issues fall for determination by this Office:

- i. Whether the Respondent's use of the Complainant's image constituted lawful processing within the meaning of the Act.
- ii. Whether the Complainant is entitled to remedies under the Act.

### **I. WHETHER THE RESPONDENT'S USE OF THE COMPLAINANT'S IMAGE CONSTITUTED LAWFUL PROCESSING WITHIN THE MEANING OF THE DATA PROTECTION ACT, 2019**

20. 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.

21. Further, Section 30(1)(b) provides for other lawful bases for processing personal data as –

- i. for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract;*
- ii. for compliance with any legal obligation to which the controller is subject;*
- iii. in order to protect the vital interests of the data subject or another natural person; for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*
- iv. the performance of any task carried out by a public authority;*

- v. *for the exercise, by any person in the public interest, of any other functions of a public nature;*
- vi. *for the legitimate interests pursued by the data controller or data processor by a third party to whom the data is disclosed, except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject; or*
- vii. *for the purpose of historical, statistical, journalistic, literature and art or scientific research.*

22. It is undisputed that the Respondent collected and processed the Complainant's image for commercial purposes.

23. The Respondent submits that the Complainant participated in a paid, contractual engagement, signed a consent form, and voluntarily took part in the promotional activation with full knowledge that her image would be used for marketing purposes. On that basis, the Respondent relies on lawful processing grounds under Section 30 of the Act.

24. The Respondent avers, and has provided supporting documentation, that the Complainant was duly engaged as a model for a promotional activation, and that she received full payment for her services. The payment vouchers and records serve as documentary proof of a contractual engagement between the parties.

25. Based on the foregoing, this Office finds that the Respondent's use of the Complainant's image met the threshold of lawful processing as prescribed under the Act.

## **II. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT.**

26. Section 40 of the Act provides for the right of rectification and erasure and states that a data subject may request a data controller or processor to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully.

27. Further to the above, Regulation 12 (3) of the Data Protection (General) Regulations, 2021 provides that a data controller or data processor shall respond to a request for erasure within fourteen days of the request.

28. In her demand letter, the Complainant requested the Respondent to cease using her image on its Instagram and brochures and to immediately take down all her images. The Respondent averred that the request was promptly complied with and fully executed, a position which the Complainant did not controvert.

29. This Office therefore finds and determines that as far as issue no (ii) is concerned, the Respondent did not violate the Complainant's rights as envisaged under the Act.

### **III. WHETHER THE COMPLAINANT IS ENTITLED TO REMEDIES UNDER THE ACT.**

30. 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.

31. Having considered the merits of the complaint, the evidence adduced by both the Complainant and the Respondent, and having found that the Respondent met the threshold of lawful processing as prescribed under the Act, and did not violate the rights of the Complainant, this Office finds that the complaint is without merit. Consequently, this Office declines to grant the reliefs sought by the Complainant and hereby dismisses the complaint in its entirety.

### **G. FINAL DETERMINATION**

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

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

**DATED** at **NAIROBI** this 7<sup>th</sup> day of September 2025



**IMMACULATE KASSAIT, MBS**  
**DATA COMMISSIONER**

