



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0752 OF 2025

**ERICK KABUYEFU ZAKAYO & 12 OTHERS .....COMPLAINANTS**

**-VERSUS-**

**BOHEMIAN FLOWERS 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 Complainants lodged a complaint with the office on 25<sup>th</sup> May 2025. They aver that the Respondent shared their personal and sensitive personal data to an insurance company without their consent.
2. The Office takes Cognizance that the Complaint form had 22 Complainants. However, in the letter of authorization dated 19/6/2025 only 12 Complainants have granted their authority to Erick Kabuyefu to act on their behalf and further submitted copies of their identification cards to that effect.

#### **B. LEGAL BASIS**

3. 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.
4. 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.

5. 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.
6. 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**

7. This Office received a complaint from the Complainants on 25<sup>th</sup> May 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainants, who were aggrieved data subjects.
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against them *vide* a letter dated 27<sup>th</sup> June, 2025 and referenced ODPC/CIE/CON/2/1 (417). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainants 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 Complainants and a contact person who could provide further details as regards to this complaint;
  - b. Provide any relevant materials or evidence in support if their response above;

- c. Whether the Complainants were notified of and consented to the sharing of their personal and next of kin data by the insurance company;
  - d. The lawful basis relied upon to share the Complainant's personal data to the insurance company if any;
  - e. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainants; and
  - f. Any other relevant information the Respondent wished the Office to consider.
9. On 8<sup>th</sup> July 2025, the Respondent submitted to the Office a Response to the Notification of Complaint.
10. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.
11. 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**

12. It is the Complainants' assertion that the Respondent, shared their personal and next of kin details to another insurance company without their consent.

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

##### **i. THE COMPLAINANT'S CASE**

13. The Complainants are former and pensionable employees of the Respondent and averred as follows:
14. That their personal and next of kin details had been shared with an insurance company without their knowledge or approval, and this disclosure of private information amounted to a serious breach of data protection and privacy.
15. That they only came to know about this matter when they were instructed to clear with the insurance company as a requirement of accessing their pension funds. According to them, this was the first time they realized their information had been passed to a 3<sup>rd</sup> party.

16. That during their entire period of active employment, the Respondent never sought or obtained their consent before disclosing their personal and next of kin details.
17. The Complainants sought compensation from this Office, for the unauthorized exposure and sharing of their personal and next of kin information to the insurance company:

**ii. THE RESPONDENTS' RESPONSE**

18. The Respondents submitted a response to the notification dated 8<sup>th</sup> July 2025 in which they averred as follows;
19. That all the individuals concerned were permanent employees of Bohemian Flowers Limited and had signed employment contracts which included clauses on pension scheme eligibility. They clarified that the scheme required contributions from both the employer and the employees.
20. That before registration into the pension scheme, each employee voluntarily provided their personal and next of kin details to the insurance company administering the scheme. Consent letter which had been signed by the employees, authorized the Company to share the necessary data with the insurance provider strictly for pension administration.
21. That Bohemian Flowers Limited had internal controls to ensure compliance with the Act, emphasizing that the information was shared lawfully, fairly and transparently for a legitimate and contractual purpose.
22. That they expressed their commitment to cooperate with the Office, indicating their readiness to provide supporting documentation such as employment contracts, consent letters and data-sharing agreements within the required timelines.

**F. ISSUES FOR DETERMINATION**

23. 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.

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- 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 (a) of the Act provides data subject with the right to be informed of the use of their personal data: *"A data subject has the right to be informed of the use to which their personal data will be put."*
29. The Respondent informed the Complainants during their recruitment that they would have to be onboarded onto their pension scheme upon confirmation of employment. The pension scheme in question at the time was to be managed by Kenindia Assurance Limited, and application forms were provided for the same.
30. The Scheme was supposed to be active from July of 2022 but due to regulatory hurdles faced by the Respondents, they, upon the advice of the Insurance Regulatory Authority decided to have the pension scheme with a different company, GA Life Assurance Limited. They lifted the Complainants' data from their Kenindia application forms and used this data to onboard them with GA Life Assurance, without the knowledge and consent of the Complainants.
31. During investigations, the Respondent was only able to provide proof of consent for onboarding onto the Kenindia Assurance pension scheme but not GA Life Assurance.
32. Based on the above, this Office concludes that use of the Complainants' and their next of kin's data without their knowledge and consent, constitutes a direct violation of the Complainants' right to be informed of the use to which their personal data will be put as covered by Section 26 (a) of the Act.

**II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT**

33. The Respondent is a data controller within the definitions of the Act and therefore has obligations pursuant to the Act.
34. 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;

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- i. Processing in accordance with their right to privacy;
- ii. Process lawfully, fairly and in a transparent manner in relation to data subjects;
- iii. Collection for explicit, specific and legitimate purposes and not further processed in a manner incompatible with those purposes; and
- iv. Collection on where a valid explanation is provided whenever information relating to family or private affairs is required.

35. The Respondent admitted, in their evidence, that they lifted the personal and next of kin details filled in the Kenindia Assurance Limited forms and used that to onboard the Complainants to GA Life Assurance Limited, without the knowledge of the Complainants. This shows a lack of transparency, and fairness in processing.

36. Further, the Respondent during investigations stated that they had communicated the change of pension scheme management from Kenindia to GA Life Assurance to the Complainants and the rest of their employees as a whole, but the Complainants after termination were surprised when they were informed that they couldn't access their pensions from Kenindia Assurance Limited but instead had to go to GA Life Assurance and clear with them to enable them to access their funds. This already proves that the Respondent further processed the Complainants' personal and next of kin data illegitimately.

37. The Respondent also only sought consent to collect the personal and next of kin data for processing with Kenindia Assurance Limited and needed to seek fresh consent to onboard them with GA Life Assurance, especially because the next of kin details included sensitive personal data.

38. The Office therefore finds that the Respondent did not fulfil 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.

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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 Complainants' right to be informed of the use to which their personal data will be put as envisaged under section 26 (a) of the Act.
46. In this context, the Respondent is hereby ordered to **each Complainant Kenya Shillings Fifty Thousand (KES 50,000)** for the infringement of her rights under the Act.
47. 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**

48. The Data Commissioner therefore makes the following final determination: -
- i. The Respondent is hereby found liable.
  - ii. The Respondent to pay each Complainant (13) in number a sum of **Kenya Shillings Fifty Thousand (KES 50,000)** as compensation.
  - iii. An Enforcement Notice to hereby be issued to 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 23<sup>rd</sup> day of August 2025.

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

