



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0867 OF 2025

SAMUEL WARUI KANG'ETHE.....COMPLAINANT

-VERSUS-

TREVOR MUTSIAMBO ANALO.....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 disclosed and misused the Complainant's Personal Data.

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 14th June, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by 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 17th July 2025 referenced ODPC/CONF/1/5 VOL II (473). In the notification of the complaint, the Respondent was among other things 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 can provide further details as regards this Complaint;
 - c) Any relevant materials or evidence in support of their response;
 - d) Evidence as to whether the Complainant consented to his personal data being used for marketing purposes;

Page 2 of 7

ODPC/CIE/CON/2/3 (120)

- e) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
 - f) Mitigation measures adopted or being adopted to address the dispute to the satisfaction of the Complainant and to ensure such occurrences do not recur.
 - g) Any other information that it may wish the Office to consider.
8. As at the date of this determination, the Respondent failed, refused, or neglected to respond to the Notification of Complaint.
9. This determination is therefore pursuant to Regulation 11(2) of the Enforcement Regulations which provides that where a Respondent does not take any action as contemplated under sub-regulation the Data Commissioner shall proceed to determine the complaint in accordance with the Act and these Regulations

D. NATURE OF THE COMPLAINT

10. The complaint concerns the allegation that the Respondent, being the Complainant's landlord, disclosed the Complainant's personal data to other third parties by emailing the Complainant's senior officials at his workplace about his rent arrears

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i) THE COMPLAINANT'S CASE

11. It was the Complainant's case that the Respondent unlawfully disclosed his personal data, including his full name, his role at his workplace, residential address, and details of their private landlord-tenant dispute by emailing his supervisors at his work place without his consent.
12. He stated that in his email, he attached a formal demand letter authored by the Respondent's advocate, referring to his designation in a manner implying misconduct and deliberately exposing their private tenancy dispute to unrelated third parties with no jurisdiction or relevance to the matter.

13. He contended that while the demand letter was authored by the Respondent's counsel, the act of circulating it to his supervisors was solely the Respondent's action, constituting an unwarranted escalation to his professional environment.

ii) THE RESPONDENT'S CASE

14. The Respondent was non-responsive and did not respond to the Notification of Complaint filed against him. Therefore, the allegations levelled against him remain uncontroverted.

F. ISSUES FOR DETERMINATION

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

- i. Whether the Complainant's personal data was lawfully processed; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE COMPLAINANT'S PERSONAL DATA WAS LAWFULLY PROCESSED

16. From the allegations put forth by the Complainant, it is evident that the complaint relates to the processing of the complainant's personal data wherein the Complainant alleges that the Respondent unlawfully disclosed his personal data, including his full name, his role at his workplace, residential address, and details of their private landlord-tenant dispute by emailing his supervisors at his work place without his consent.

17. This Office will thus consider whether the processing of the Complainant's personal data was lawful. Section 30 of the Data Protection Act provides the lawful bases for processing personal data. It provides:-

30. Lawful processing of personal data

(1) A data controller or data processor shall not process personal data, unless (a) the data subject consents to the processing for one or more specified purposes; or (b) the processing is necessary-

- (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;*
- (iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*
- (v) the performance of any task carried out by a public authority;*
- (vi) for the exercise, by any person in the public interest, of any other functions of a public nature;*
- (vii) 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*
- (viii) for the purpose of historical, statistical, journalistic, literature and art or scientific research.*

(2).....

18. The above-stated are the lawful bases upon which the data controller, the Respondent herein, should have processed the Complainant's personal data.

19. Despite being given an opportunity to respond to the Complaint, the Respondent did not file a response to the allegations brought by the Complainant. As stated above the Respondent was duly notified of the complaint and was required to respond to

the allegations against it within the prescribed timelines contained in the notification letter. As such, the Complainant's allegations remain uncontroverted.

20. This Office therefore finds that in as far as issue no. (i) is concerned the Respondent has failed to establish the lawful basis for processing the Complainant's personal data.

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

21. Under 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.

22. As his relief, the Complainant sought that: i) a cease and desist notice be issued, preventing further misuse of the Complainant's personal data or employment details, ii) regulatory actions as per sections 72 and 73 of the Act be taken against the Respondent and iii) additional civil remedies available under the Act.

23. 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.

24. 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.

25. This Office takes cognisance of the fact that the complaint emanated from a dispute between the parties over the refund of some Ksh. 30,000 rental deposit that the Respondent was claiming from the Complainant. We note that this amount has since been settled between the parties.

26. Having found that the Complainant's claim is uncontroverted, and it therefore stands the Respondent is hereby directed to compensate the Complainant the amount of Kshs— **30,000/= (Thirty Thousand Shillings Only)**, for unlawful processing of the Complainant's personal data.

G. FINAL DETERMINATION

27. The Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to compensate the Complainants **KES 30 000/= (Thirty Thousand Kenya Shillings Only)**
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 11th day of September 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

