



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0733 OF 2025

**SARAH GICHIRA GATHONI .....COMPLAINANT**

**-VERSUS-**

**AIRFLO 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 Complainant lodged a complaint against the Respondent concerning the unlawful retention and control of her personal Safaricom line. The said line was originally registered in the Complainant's name prior to her employment but was subsequently taken over and utilized by the Respondent in the course of her employment. Upon exiting the company, the Complainant requested the release and return of her line; however, the Respondent failed to do so within the required time line and continued to retain and use it without her authorization.

#### **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 23<sup>rd</sup> 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 3<sup>rd</sup> July, 2025 and referenced ODPC/CIE/CON/2/1/(430). 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 can provide further details as regards to this complaint,

- c. Provide any relevant materials or evidence in support of your response above, including but not limited any agreements, consents forms, or communication with the Complainant regarding the registration and use of the SIM card.
- d. An explanation as to how and why the Complainants personal SIM card was registered under your organizations name including whether the Complainant was informed or consented to this arrangement.
- e. Clarifications to why the SIM card remains under the organizations control despite the Complainants departure, and whether any steps have been taken to release it.
- f. Any relevant materials or evidence in support of their response above; including internal policies governing mailing list management, consent withdrawal and Data retention;
- g. The lawful basis for the continued processing or control of the Complainant's personal data -specifically the SIM card after termination of her employment.
- h. Any internal policies or procedures governing employee Sim card registration, portability, or data transfer upon exit.
- i. Any mitigation measures adopted or being adopted to address the complaint including steps taken to release the Sim card and restore the Complainant's access to services , if any,
- j. Any other information you wish the Office to consider

8. The Respondent submitted a Response to the Notification of Complaint Vide a letter dated 10<sup>th</sup> July 2025.

9. 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**

10. The Complainant avers that the Respondent unlawfully retained and exercised control over her personal Safaricom line. She asserts that the line had originally

been registered in her name prior to her employment but was subsequently taken over and utilized by the Respondent during the course of her employment. Upon leaving the company, she requested its release and return; however, the Respondent failed to comply and continued to retain and use the line without her authorization.

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

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

11. The Complainant avers that she registered her Safaricom line *07-XXXXXX* over seven years ago as her personal number.
12. She states that during her employment, the Respondent caused the said line to be registered under its name.
13. The Complainant notes that despite leaving the Respondent's employment three years ago, the line has not been released back to her.
14. She further avers that Safaricom has since blocked the line and requested a release letter from the Respondent, which has not been provided.
15. The Complainant states that her multiple email requests to the Respondent have gone unanswered. She emphasizes that the continued blockage of the line has disrupted her ability to communicate and effectively run her business.

### **ii. THE RESPONDENTS' RESPONSE**

16. The Respondent avers that the Complainant was employed from 18th March 2019 to 30th October 2021, and during this period her personal line *07-XXXXXX* was migrated to the company's postpaid account with her knowledge and consent, solely for operational purposes.
17. It contends that this migration was administrative in nature and did not affect legal ownership, which remained with the Complainant throughout.
18. The Respondent states that on 8th September 2021, a decision was taken to remove all personal numbers from the corporate plan and issue official company lines, and by 20th September 2021, the Complainant's number had been delinked from the postpaid account.

19. It further avers that as part of the separation process, the Complainant submitted her identification documents directly to Safaricom to complete the transfer, confirming closure of any corporate association with the line.
20. The Respondent notes that by the time the Complainant exited employment in October 2021, she had already been issued a company line and her personal line was no longer under company control.
21. It contends that no formal or informal request has since been made by the Complainant for the release of the line, and asserts that she has continued to use it freely without interference.
22. The Respondent purports that it has no record of the emails allegedly sent by the Complainant and maintains that she had alternative communication channels available.
23. Finally, the Respondent emphasizes that it has no control, access, or interest in the Complainant's line since September 2021, and has issued an authorization letter to Safaricom—copied to the Complainant via email (*XXXX@XXXX.com*)—to facilitate any further migration if required.

### **iii. THE COMPLAINANT'S REJOINDER**

24. The Complainant avers that she received a release letter from the Respondent dated 10th July 2025.
25. She further states that on 7th August 2025, she wrote to Safaricom seeking confirmation of the ownership status of her Safaricom line *07-XXXXXX*.
26. The Complainant notes that on the same date, Safaricom confirmed to her that the line remained registered under the Respondent, contrary to the Respondent's assertions.

### **IV. THE RESPONDENT'S REJOINDER**

27. The Respondent notes that the present matter concerns the Complainant's mobile number *0722-XXXXXX*, which forms the subject of complaint ODPC/COMP/0733/2025. The Respondent avers that it has continuously sought to resolve the matter through Alternative Dispute Resolution (ADR).
28. The Respondent states that its employee, has made several attempts to reach the Complainant via calls, text messages, and email; however, these efforts have not elicited any response.

29. The Respondent further avers that on 15th July 2025, it issued an authorization letter to the Complainant through her email address.
30. A follow-up call went unanswered, prompting the Respondent to send a confirmation text message to ensure delivery. According to Safaricom, the Complainant is required to present her National ID together with the said authorization letter at any Safaricom retail outlet in order to finalize migration of the line into her personal ownership.
31. The Respondent contends that it no longer has control over the Complainant's line. It notes that during her employment she was issued a company SIM card *0113-XXXXXX*, and on the same day, Safaricom was instructed to transfer ownership of her previous line *07-XXXXXX* to her personal account. The Respondent purports that Safaricom confirmed completion of this termination process.
32. The Respondent emphasizes that it does not use or control the Complainant's number in any capacity, and that the SIM card and associated number are now managed solely by Safaricom. It maintains that it has no proprietary interest or administrative authority over the line.

#### **F. ISSUES FOR DETERMINATION**

33. 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 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**

34. Section 26(d) of the Data Protection Act, 2019 guarantees a data subject the right to correction of false or misleading data. This right is reinforced by Section 40 of the Act, as read with Regulation 10 of the Data Protection (General) Regulations, 2021, which provides that a data subject may request rectification of their personal data where it is untrue, inaccurate, outdated, incomplete, or misleading, and

obligates a data controller or processor to effect such rectification within fourteen (14) days where satisfied that rectification is necessary.

35. In the present case, the Complainant acknowledges that she initially consented to the migration of her line to the Respondent's corporate account during her employment. The issue arose upon cessation of her employment in 2021, when the Respondent failed to ensure that her number was reverted back to her name. As a result, her personal data remained inaccurately listed under the Respondent despite her departure.
36. In its response, the Respondent claimed that it had sent formal communication to Safaricom requesting the deactivation of all personal numbers from the corporate post-paid account.
37. Further, while the Respondent stated that at the time of the Complainant's exit her number was no longer reflected in its internal records, it failed to confirm whether Safaricom had finalized the rectification process. After the Office sent the Notification of Complaint, the Respondent then sent a letter dated 10<sup>th</sup> July 2025 requesting the mobile number ownership transfer request. However, the correspondence from Safaricom dated 7<sup>th</sup> August 2025 confirmed that the line remained registered under the Respondent, underscoring that the rectification process had not been concluded.
38. This sequence of events demonstrates that the Respondent did not take adequate steps to ensure that the Complainant's personal data was accurately and fully rectified as required under Section 40(1)(a) of the Act and Regulation 10 of Data Protection (General) Regulation 2021 and only did so after the Complainant had lodged a Complaint with the Office.
39. Accordingly, the Office finds that the Complainant's right to correction of false or misleading data under Section 26 (d) of the Act as read together with Section 40(1)(a) of the Act was violated.

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

45. 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.
46. 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.
47. 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.
48. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right to fact that the Complainant's right to correction of false or misleading data under Section 26(d) of the Act was infringed.
49. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000)** for the infringement of her rights under the Act.

#### **G. FINAL DETERMINATION**

50. The Data Commissioner therefore makes the following final determination: -
- i. The Respondent is hereby found liable.
  - ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000)** 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 20<sup>th</sup> day of August 2025.

  
**IMMACULATE KASSAIT, MBS  
DATA COMMISSIONER**



