



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0596 OF 2025

LILIAN NYAWIRA NDERITU 1ST COMPLAINANT

JOHN GITAHU MUREITHI 2ND COMPLAINANT

-VERSUS-

JOSEPHAT KARUNGO 1ST RESPONDENT

FRESHIA MUGO WAWERU 2ND 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 complaints against the Respondents alleging that the Respondents' CCTV cameras had been installed in a manner that intruded upon their private residence. Despite several attempts to request that the surveillance be removed the Respondents allegedly failed to comply.

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 22nd July 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 28th July, 2025 and referenced ODPC/CIE/CON/2/1(492). 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;

- d. The lawful basis relied upon to position the cctv cameras to face the Complainant's property.
 - e. An elaborate representation of how data subjects can exercise their rights in relation to data protection.
 - f. The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the Complaint and the mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the Complaint do not take place again, if any,
 - g. Any other relevant information the Respondent wishes the Office to consider.
8. The Respondent submitted to the Office a Response to the Notification of Complaint vide a letter dated 28th July 2025.
9. Upon receipt of the aforementioned correspondence and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.
10. 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

11. The complaint stems from allegations that the Respondents installed CCTV cameras in a manner that intruded upon the Complainants' private residence.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

12. The Complainants contend that on or about mid-2021, the Respondents installed CCTV cameras on their property, an act which, in their view, purports to enhance security within the neighborhood but has instead infringed upon their right to privacy.
13. They further aver that the placement of the said cameras has deprived them of a quiet and safe living environment, thereby interfering with the peaceful enjoyment of their property.

14. The Complainants note that two of the cameras' fields of view allegedly extend into their kitchen and the surrounding areas capturing private and domestic activities within their home.
15. They also contend that the continued surveillance has caused them considerable anxiety, stress and emotional as well as psychological distress.
16. Moreover, they aver that despite multiple attempts to resolve the matter amicably with the Respondents including engagement through mutual contacts and legal representation the issue remains unresolved.
17. The Complainants further note that they escalated the matter to the police and the area chief, however, the cameras have remained positioned in a manner that in their opinion continues to purport a breach of their right to privacy.
18. The Complainant sought the following remedies from this Office:

- i. Removal of the CCTV cameras and cessation of activities invading their privacy.
- ii. General damages for anxiety, stress, and emotional and psychological distress caused by the alleged intrusion.
- iii. Sanctions against the respondents for breach of personal data privacy.

ii. THE RESPONDENTS' RESPONSE

19. The Respondents categorically deny the unfounded allegations that they installed CCTV cameras to spy on, monitor, or record images of the Complainants' property. They aver that the claims of privacy violation are factually inaccurate, legally untenable, and appear motivated by malice rather than a genuine concern for data protection. The Respondents maintain that their actions were lawful, necessary, and guided by legitimate security concerns.
20. They state that the CCTV camera in question had already been readjusted before the formal complaint was received. The adjustment was made on 14th July 2025, as a gesture of goodwill following a meeting with the area chief, Association Chairman and another area member. This was done voluntarily and without prompting from the Office.
21. The Respondents aver that the CCTV was installed in early 2021 after an attempted burglary, following consultations with community elders and security

representatives, they contend that the installation was done in good faith to enhance household and neighborhood safety, and not to infringe on anyone's privacy. Furthermore, they maintain that the Complainants have made defamatory remarks about their security system, which were reported at Kandisi Police Station.

22. Notwithstanding the foregoing, the Respondents deny all allegations raised in the complaint and reiterate that the camera's current orientation does not violate privacy rights. However, and without prejudice to their position, they remain willing to cooperate with the Office of the Data Protection Commissioner should further engagement be necessary. This goodwill offer does not amount to any admission of liability.

23. In conclusion, the Respondents respectfully submit that the complaint is without merit and should be dismissed in its entirety. They assert that the CCTV adjustment was done voluntarily and in advance, that the installation served a legitimate security purpose, and that there is no evidence of unlawful data collection or intentional privacy breach.

iii. THE COMPLAINANTS' REJOINDER

24. The Complainants submitted their rejoinder to the letter dated 18th August 2025 from the Respondents vide a letter dated 29th August 2025.

25. The Complainants aver that the range of the CCTV camera mounted on the soffits (beneath the roof overhang on the first floor of the Respondents' house near a glass window) was directly facing their premises and extended into their residence. During the meeting held at the Chief's office on 23th April 2025, it was observed and confirmed that the specific camera captured parts of the Complainants' residence. The accompanying evidence clearly demonstrates this.

26. The Complainants further contend that the same camera also overreached other areas within their compound thereby violating their privacy. They assert that this continued breach has deprived them of their right to privacy and of the quiet and safe enjoyment of their home causing persistent discomfort and distress.

27. The Complainants clarify that the camera in question is the one mounted at the soffits and not the one referred to in the Respondents' letter. They maintain that

- the overreach began soon after the installation of the cameras in 2021 and continued until 16th July 2025, when the camera was finally removed.
28. They maintain that the estate meeting held on 4th May 2021 did not grant authority to any person or neighbour to install cameras that could breach another resident's privacy. The Respondents therefore had a duty of care during installation to ensure that their actions did not cause harm or intrusion.
29. The Complainants aver that the Respondents' delay in adjusting the camera, even after being notified, caused them distress and anxiety. They made several attempts to resolve the matter amicably without success. They reached out through the current chairperson of the estate and later through a mutual acquaintance an advocate of the High Court, who on 23th August 2024 appealed to the Respondents to reposition the cameras.
30. The Complainants aver that they also reported the Respondents, and there was no action was taken. The issue was later presented to the area Chief on 23th April 2025, yet the Respondents refused to remove the camera. The Complainants followed up with a letter dated 9th June 2025 to emphasize their continued distress.
31. The Complainants acknowledge that security cameras play an important role in enhancing safety. However, they contend that there is no justification for violating another person's privacy in the name of security.
32. They further aver that this matter was formally reported to the Office of the Data Protection Commissioner on 22nd April 2025 to address the violation and prevent its recurrence. They maintain that even the evidence provided by the Respondents confirms ongoing intrusion and, in some cases, shows deliberate conduct, including online monitoring through social media platforms.
33. In light of the above, the Complainants urge the Office to find that the Respondents violated their right to privacy. They seek an order directing the removal of all cameras that overreach into their private space and an award for general damages for the anxiety and psychological distress caused by the violation.

F. ISSUES FOR DETERMINATION

34. The Complaint concerns the alleged unlawful installation and positioning of CCTV cameras by the Respondents. The Complainants claim that the cameras captured

parts of their residence, interfering with their right to privacy and causing emotional distress. The Respondents deny the allegations, stating that the cameras were installed for security purposes and were later readjusted on 14th July 2025 as a gesture of goodwill.

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

- i. Whether the Respondents fulfilled their obligations in accordance with the Act.
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENTS FULFILLED THEIR OBLIGATIONS IN ACCORDANCE WITH THE ACT

36. Section 25 of the Data Protection Act, 2019 obligates every data controller or processor to ensure that personal data is processed in line with the principles of privacy, fairness, purpose limitation, and accountability. Under Section 25(c) and (d), data should be collected for explicit and legitimate purposes and limited to what is necessary for those purposes.

37. The Respondents relied on legitimate interest under Section 30(1)(b)(vii) of the Act, claiming that the CCTV system was installed for security. While the Office acknowledges that security is a legitimate purpose, it must be pursued proportionately and within the confines of the law. The Respondents did not demonstrate that they ensured the camera's range did not capture neighbouring property. This failure breached the principles of privacy, lawfulness, fairness, and data minimisation under Section 25(a), (b) and (d) of the Act.

38. Moreover, the Respondents admitted that the camera was later repositioned, which demonstrates that its earlier range extended into the Complainants' property. Even though the adjustment was ultimately made, the prolonged period before correction amounted to interference with the Complainants' privacy.

39. Further, Section 40(1) of the Act grants data subjects the right to request rectification of any inaccurate or excessive processing without undue delay. Regulation 10(4) of the Data Protection (general) Regulations, 2021 requires rectification within fourteen days of such a request or written justification for delay.

40. The Complainants made several rectification requests between August 2024 and April 2025, both directly and through intermediaries. The Respondents only acted in July 2025, almost a year later. This delay exceeded the statutory period and violated the principles enshrined under section 25 of the Act.
41. The Office also is cognizant of the fact that the Respondents did not take adequate steps at the outset to ensure that the CCTV's field of view remained confined within their boundary. The Complainants' home is a private space, and continuous surveillance from a neighboring property, even unintentionally, constitutes unauthorized processing of personal data contrary to Sections 25(a), (b), (c), and (d) of the *Data Protection Act, 2019*. In that regard, the Respondents did not fulfil their obligations in accordance with the Act.

II. 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.
43. The Complainants seek the removal of the CCTV cameras, compensation for distress caused by the invasion of their privacy, and sanctions against the Respondents for breaching the Data Protection Act.
44. 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.
45. 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.
46. In considering whether to issue compensation, this Office notes that the Respondents' actions infringed the Complainants' right to privacy and violated the data protection principles under Section 25 of the Data Protection Act, 2019.

47. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred Thousand (KES 200,000)** for the infringement of his rights under the Act.


48. Having found that the Respondents failed to fulfill their obligations under the Act and attendant Regulations. Consequently, an Enforcement Notice shall issue against the Respondents pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

G. FINAL DETERMINATION

49. 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 Thousand (KES 200,000)** 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 20th day of October 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

