



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 1966 OF 2024**

**KENNEDY OMONDI OCHIENG.....COMPLAINANT**

**-VERSUS-**

**FINGROW CAPITAL 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 unlawfully disclosed the Complainant's confidential financial personal data to third parties without his consent.

**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 28<sup>th</sup> November, 2024. 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 23<sup>rd</sup> December 2024 referenced ODPC/CONF/1/5 VOL II (385). 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 to the complaint;
  - c) The contractual agreement with the Complainant;
  - d) The lawful basis relied upon to share the Complainant's financial data to unauthorized third parties, if any;

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- e) Provide any relevant materials or evidence in support of the response;
  - 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 in law, 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, unlawfully disclosed the Complainant's confidential personal and financial data to third parties without his consent.

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

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

11. It was the Complainant's case that the Respondent, through its General Manager, unlawfully disclosed the Complainant's financial personal data to third parties without his consent.
12. It was the Complainant's case that he took a credit facility from the Respondent. He stated that despite having a telephone conversation with the institution on the repayment on 28<sup>th</sup> November 2024, the Respondent through its general manager retrieved his confidential financial personal information and forwarded it via email to ABC Bank's customer service email address, [talk2us@abcthebank.com](mailto:talk2us@abcthebank.com), that is

accessed by numerous individuals in the bank that are not authorized to handle private personal staff data.

13. To the Complainant, the email containing his financial personal information was sent to the Complainant's colleagues and guarantor without his authorization.

14. The Complainant further contended that the confidential financial information shared as an attachment *via* email included:-

- a) The Complainant's February, March, & April 2024 payslips.
- b) The Complainant's 6-month account statements from 01.11.2023 to 08.05.2024.
- c) The Complainant's letter of promotion dated 30.01.2019.
- d) The Complainant's National Identity Card.
- e) The Complainant's guarantors' personal details, including their ID numbers, name, telephone number, occupation and gross pay.

15. To support his complaint, the Complainant adduced:-

- a) A copy of the email from the Respondents forwarding his personal information to ABC Bank.
- b) Copy of the application and the Respondents' offer letter for salary check off loan.
- c) KRA certificate and front ID.

## **ii) THE RESPONDENTS' CASE**

16. The Respondents was non-responsive and did not respond to the Notification of Complaint filed against it. Therefore, the allegations levelled against it remain uncontroverted.

## **F. ISSUES FOR DETERMINATION**

17. 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

18. Section 2 of the Act defines processing to mean *any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means such as:*

- a) *collection, recording, organisation, structuring;*
- b) *Storage, adaptation or alteration;*
- c) *Retrieval, consultation or use;*
- d) *Disclosure by transmission, dissemination or otherwise making available; or*
- e) *Alignment or combination, restriction, erasure or destruction. [Emphasis supplied]*

19. The Complainant alleges that personal information shared as attachment via email to ABC Bank's customer service email address [talk2us@abcthebank.com](mailto:talk2us@abcthebank.com) included: February, March & April 2024 payslips, the Complainant's 6 months account statements from 01.11.2023 to 08.05.2024, promotion letter dated 30.01.2019, National Identity Card, Guarantors personal details including their IDs numbers, Name, Telephone number, Occupation and Gross Pay.

20. From the allegations put forth by the Complainant, it is evident that the complaint relates to the processing of his personal data and financial data, wherein the Complainant alleges that his personal and financial data was sent to third parties, the Complainant's colleagues and guarantor, without his consent. The sending of the Complainant's personal and financial data by the 2<sup>nd</sup> Respondent to ABC Bank's customer service email address amounted to disclosure by transmission, dissemination and or otherwise making the same available.

21. 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) Further processing of personal data shall be in accordance with the purpose of collection.*

*(3) A data controller who contravenes the provisions of sub-section (1) commits an offence.*

22. The above-stated are the lawful bases upon which the data controller, the Respondents herein, should have processed the Complainant's personal data.
23. Despite being given an opportunity to respond to the Complaint, the Respondents did not file a response to the allegations brought by the Complainant. As stated above in paragraph 7, the Respondents were duly notified of the complaint and were required to respond to the allegations against them within the prescribed timelines contained in the notification letter. As such, the Complainant's allegations remain uncontroverted.
24. This Office therefore finds that in as far as issue no. **(i)** is concerned the Respondents have 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.**

25. 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.
26. The Complainant sought that he be compensated as one of the reliefs sought.
27. 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.

28.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.

29.Having found that the Respondent processed the Complainant's personal data unlawfully, the Respondent is hereby directed to compensate the Complainant **KES 200,000/- (Two Hundred Thousand Shillings Only)**.

#### G. FINAL DETERMINATION

30.The Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby **ordered to pay the Complainant Kenya Shillings Two hundred thousand (KES. 200,000/=)** as compensation; and
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 25<sup>th</sup> day of February 2025.



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**IMMACULATE KASSAIT, MBS  
DATA COMMISSIONER**