



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1899 OF 2024

LEE MUTUNGA.....COMPLAINANT

-VERSUS-

MILESTONE GAMES LIMITED T/A SPORTPESA.....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 on 20th November, 2024 alleging that the Respondent failed to delete his personal data despite numerous requests to do so.

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 20th November, 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, who is an 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 3rd December, 2024 and referenced ODPC/CONF/1/5 VOL II (335). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, it was 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 it by the Complainant;
 - b. A contact person who can provide further details regarding the complaint;
 - c. The lawful basis relied upon to process and engage with the Complainant's personal data;
 - d. Any relevant materials or evidence in support of the response;

- e. Reasons why it requires one's ID, date of birth, occupation, postal address and physical address as mandatory fields for one to delete his account;
 - f. A detailed procedure on how data subjects can exercise their data protection rights;
 - g. Its data protection policy;
 - h. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint does not take place again; and
 - i. Any other relevant information it wishes the Office to consider.
8. The Respondent submitted its response to the Notification of Complaint letter *via* a letter dated 17th December, 2024.
9. This determination is therefore as a result of analysis of the complaint as received, the response by the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The Complaint relates to the alleged failure to delete the Complainant's personal data despite numerous requests to do so. The deletion request required prior approval from the Respondent, who demanded that the Complainant provide additional documents to facilitate the request namely; his National ID, date of birth, occupation, postal address and physical address.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant alleged that on various dates from 3rd April 2024 to 25th April 2024 he engaged in an email exchange with the Respondent requesting and demanding them to delete his personal data from their website. He provided copies of the email correspondences as proof.

12. The Complainant stated that the Respondent's website is designed in a way that it does not give a user an opportunity to delete their account without the approval of the Company.
13. The Complainant averred that after repeated demands to have his data deleted, and highlighting the fact that there was no option for him to delete his account from the Respondent's website, the Respondent instead demanded that he provides the following information:
- i) His ID
 - ii) Date of Birth
 - iii) Occupation
 - iv) Postal Address
 - v) Physical Address
14. The Complainant made it clear that he did not wish to disclose the above data and no explanation was given as to why the above information was required to delete his account.
15. Despite the Complainant's statements and reservations, the Respondent stated that his account details would not be deleted unless he provided the aforementioned information.
16. The Complainant asserted that as of 20th November 2024, his account and data has still not been deleted.
17. The Complainant outlined the actual or potential harm or urgency to be taken note of as follows, "gambling is extremely addictive and can negatively impact someone's life. The harm that may befall someone who is trying to quit can be substantial. The difficulty in deleting an account in this case is by design to ensure a gambler is trapped in the vice. The damage to someone's life can be substantial."
18. In conclusion, the Complainant sought the following remedies:
- i) Damages amounting to KES. 1,000,000.

- ii) A directive to the Respondent to simplify the account deletion process and ensure data subjects can easily delete their account and personal data.

19. The complainant provided the following documents as evidence:

- i) Screenshots of email correspondences between him and the Respondent.
- ii) Screenshots showing the settings page of the Respondent's website where the demanded information is to be input.

ii. THE RESPONDENT'S RESPONSE

20. The Respondent stated that the Complainant registered an account on its platform on 3rd April 2024. At the point of registration, the only detail he provided was his phone number 07*****30. On the same day he made a request via email address l*****2@gmail.com to have his account registered under the mobile number 07*****30 closed and another *via* the email address m*****e@gmail.com.

21. In order to authenticate his email address, the Respondent stated that it advised the Complainant to update his email address linked to the said account on the system so that the company could effect the account closure. This was necessitated by the fact that the Complainant sent the request for closure of his account using two email addresses and therefore the Company could not authenticate that the request for closure was coming from the actual account owner, due to the varying email addresses. The Respondent provided the email correspondences as proof.

22. The Respondent stated that the Complainant was only required to update his email address on the account registered under mobile number 07*****30 for authentication purposes and no other personal data or details were requested from him.

23. Additionally, and as part of the account closure process, the Complainant was advised that he had the option of self-excluding from any communication from the company by sending the word STOP to 79079.

24. The Respondent asserted that it does not require one's ID, date of birth, occupation, postal address and physical address as mandatory fields for one to delete his/her account. What is required is only updating one's email address on their respective account if the requesting email is different from the one indicated on one's account at point of registration.
25. The Respondent averred that it only asks for one's ID and Date of Birth as mandatory fields at the point of account registration so as to verify that the person registering the account has attained eighteen (18) years of age in compliance with Sections 28 and 48 of Betting, Lotteries and Gaming Act (Cap.131).
26. The Respondent stated that on 4th December, 2024 it acted on the request for closure by the Complainant, closed the account and informed the Complainant via text on even date of the same. The Respondent provided the SMS communication as proof.
27. The Respondent provided the following documents as evidence:
- i) Its license from the Betting Control and Licensing Board;
 - ii) Email correspondences between the Complainant and the Respondent;
 - iii) Its certificate of registration as a data controller from the Office of the Data Protection Commissioner;
 - iv) Its data protection and privacy policy; and
 - v) SMS communication to the Complainant on closure of his account.

F. INVESTIGATIONS UNDERTAKEN

28. The Office analysed the complaint as lodged, the Respondent's response and the documents submitted by both parties as evidence.
29. The Office scheduled a site visit at the Respondent's premises on 13th February, 2025 to conduct further investigations into the matter. The Respondent was uncooperative despite the fact that it had received adequate notice of the scheduled site visit.
30. This act of deliberately obstructing investigations amounts to obstruction of the Data Commissioner contrary to Section 61(b) of the Act.

31. Investigation Officers from the Office left and noted the Respondent's efforts to obstruct investigations.
32. The Office established that the process of closure of an account required the input of one's ID number, date of birth, occupation, postal address and physical address as mandatory fields contrary to the Respondents assertions that what was required was only updating one's email address on their respective account if the requesting email is different from the one indicated on one's account at the point of registration.
33. This act of deliberately giving the Data Commissioner information which is misleading amounts to obstruction of the Data Commissioner contrary to Section 61(d) of the Act.
34. The Office established that the account closure required one to input their ID number, date of birth, occupation, postal address and physical address as mandatory fields. The process could not be completed without the input of the above details.

G. ISSUES FOR DETERMINATION

35. 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
 - 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

36. Section 40(1)(b) of the Act provides for the right of erasure and states that, "*a data subject may request a data controller or data processor to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully.*"

37. In addition, Regulation 12(1)(b) of the Data Protection (General) Regulations, 2021 provides that a data subject may request a data controller or data processor to erase or destroy personal data held by the data controller or data processor where the data subject withdraws their consent that was the lawful basis for retaining the personal data.
38. The Complainant exercised his right of erasure *via* several emails sent to the Respondent requesting it to close the account registered under mobile number 07*****30.
39. The Respondent on the other hand, requested the Complainant to update his email address linked to his account as part of the deactivation process. However, the process of updating his email required him to input his ID, date of birth, occupation, postal address and physical address as mandatory fields. The process could not be completed without the input of the above details.
40. The Complainant via email informed the Respondent that he was willing to update his email but was not willing to provide the rest of the details required by the Respondent to effect the closure of the account.
41. The Respondent insisted that the requested details must be updated so as to save the email address and close the account.
42. The Respondent intentionally or negligently ignored the Complainant's request for erasure. It was only after the intervention of this Office, by notifying the Respondent of the complaint filed against it, that it acted upon the Complainant's request to close his account.
43. This act of requesting additional information which is not relevant to the purpose for which it is processed goes against the data minimization principle of data protection which states that, *"every data controller or data processor shall ensure that personal data is adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed."*
44. The Respondent did not demonstrate why the occupation, postal address and physical address details were relevant to the closure of the account.

45. By requesting for unnecessary personal data not relevant to the processing, the Respondent denied the Complainant an opportunity to exercise his right of erasure.

46. From the foregoing, this Office finds that the Complainant's right of erasure of his personal data was violated by the Respondent.

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

47. 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.

48. The Complainant prayed for an order directing the Respondent to simplify the account deletion process and ensure data subjects can easily delete their account and personal data. The Complainant also sought for compensation amounting to KES 1,000,000.

49. Section 65 of the Act provides for compensation to data subjects and states, "*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.*"

50. Section 65(4) of the Act states that, "*damage includes financial loss and damage not involving financial loss, including distress.*"

51. Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

52. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right of erasure was violated by the Respondent and the fact that the Respondent failed to adhere to the data minimization principle of data protection in its account deletion process.

53. The Office declines to award the Complainant KES 1,000,000 as prayed. The Office hereby orders the Respondent to pay the Complainant **Kenya Shillings three hundred and fifty thousand (KES. 350,000/=)** as compensation.

H. FINAL DETERMINATION

54. The Data Commissioner therefore makes the following final determination: -

- i. The Respondent is hereby found liable for violating the Complainant's right of erasure of his personal data.
- ii. A recommendation for prosecution is hereby made against the Director(s) of the Respondent Company for obstruction of the Data Commissioner pursuant to Section 61 of the Act.
- iii. The Respondent is hereby ordered to pay the Complainant **Kenya Shillings Three Hundred and Fifty Thousand (KES. 350,000/=)** as compensation;
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 17th day of February 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**