



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0126 OF 2024

ANTONY MWENDA KINOTI.....COMPLAINANT

-VERSUS-

AVENTUS TECHNOLOGY LIMITED T/A LENDPLUS.....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 filed a complaint against the Respondent alleging that the Respondent unlawfully used his personal data to register and process a loan application without his 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 '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 COMPLAINTS

6. On 27th January 2025, pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations, the Complainant lodged his complaint to this office.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the complaint filed against it *vide* a letter referenced ODPC/CIE/CON/2/1 (093) and dated 24th February 2025. The Office in the said Notification of Complaint requested the Respondent to furnish the Office with –
 - a) A response to the allegations made against it by the Complainant;
 - b) A contact person who can provide further details as regards the complaint;
 - c) Details on how the Respondent obtained the Complainant's personal data;
 - d) The Contractual agreement with the Complainant;
 - e) Whether the complainant was notified and gave express consent for the use of his personal data;
 - f) Provide any relevant materials or evidence in support of the response;
 - g) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainants; and
 - h) Any other information it wished the Office to consider.

8. In the interest of fair justice, and pursuant to Regulation 11 of the Data Protection (Complaints Handling Procedures and Enforcement) Regulations, 2021, the Office further informed the Respondent of the options of -
 - a. Reviewing the complaint and summarily resolving the same to the satisfaction of the Complainant, or
 - b. Resolving the complaint through mediation, negotiation and/or conciliation, as the alternative dispute resolution (ADR) mechanisms provided for by the Act and the Regulations.
9. The Respondent responded to the said notification letter on 3rd March 2025.

D. NATURE OF THE COMPLAINT

10. The Complainant alleged that the Respondent unlawfully used his personal data to register and process a loan application without his authorization.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. It was the Complainant's case that sometime in 19th June 2024, through the Respondent's online application, he discovered that his personal data, precisely his national identification number, was in use for a loan application operated by the Respondent.
12. The Complainant contended that he had never applied for a loan or given consent for the processing and use of his personal data.
13. He further contended that upon realizing that his national identification number was in use, he called the Respondent's call center for clarification only to be informed that his national identification number was already registered to a foreign number unknown to him and was advised to take a video holding his ID card and send it via WhatsApp for action to be taken.
14. The complainant also stated that he requested to be informed of the phone number attached to his national identification number by the Respondent for him to establish the veracity thereof, but he was denied the same.

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

- a) Screenshot of the Complainant's ID number in the Respondent's platform;
- b) Demand letter sent to the Respondent by the Complainant.

ii. THE RESPONDENT'S RESPONSE

16. The Respondent in its response to the Complaint, stated that the Complainant had logged into its system and made 25% progress on the platform and keyed in his alleged details voluntarily.

17. The Respondent contended that by the Complainant entering his details on the platform, he acknowledged and agreed to the Respondent's privacy policy and terms of service, which outline how data is collected, used and stored.

18. The Respondent stated that the Complainant attempted to apply for a loan but it was rejected as the details provided did not match its KYC review process hence the rejection as the details provided did not match its KYC review process hence the rejection reason was fraud.

19. The Respondent further stated that the ID number availed and the phone number provided did not match the details as per the Safaricom details provided when money is disbursed to customers.

20. The Respondent also contended that the Complainant provided a different number registered with a different person and provided his main phone number as an alternative number, hence the flagging.

H. ISSUES FOR DETERMINATION

21. The following issue falls 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.

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

22.As earlier stated the complaint relates to unauthorized processing of the Complainant's personal data, by the Respondent. The Complainant alleged that the Respondent used his national identification number to register a loan application linked to another number which was not his.

23.The Respondent on its part denied the complainant's averments and stated that the Complainant by himself logged into its system and made 25% progress on the platform and keyed in his details voluntarily. The Respondent further stated that by the Complainant entering his details on the platform, he acknowledged and agreed to the Respondent's privacy policy and terms of service, which outline how data is collected, used and stored.

24.Section 30 of the Data Protection Act provides the lawful basis for processing personal data. It provides that a data controller or data processor shall not process personal data, unless the data subject consents to the processing for one or more specified purposes; or the processing is necessary for other purposes set out in Section 30 (1)(b) of the Act.

25.Inasmuch as the Respondent states that the Complainant voluntarily accessed its online platform and voluntarily filled in his information, the evidence adduced does not adequately demonstrate their averments. From their response, it is not discernible that it was the Complainant who keyed in the information provided by the Respondent to this office.

26.This Office therefore finds that as far as issue no **(I)** is concerned, the Respondent did not process the Complaint's personal data/information lawfully.

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

27.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.

28. The Complainant requested this Office to take whatever measures deemed necessary to prevent such occurrences in the future, in accordance with the laws of the country.
29. This Office has established from the evidence adduced that the Respondent deleted the Complainant's personal data as he had requested in the Complaint.
30. 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.
31. 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.
32. The Complainant claimed the remedy of compensation against the Respondent. The Respondent did not respond to this prayer for the remedy of compensation.
33. Having found that the Respondent did not process the Complainant's personal data/information lawfully the Respondent is hereby directed to compensate the Complainant, the sum of **KES 200,000/- (Two Hundred Thousand Kenya Shillings Only)**.

G. FINAL DETERMINATION

34. In the ultimate, the Data Commissioner therefore makes the following final determination;
- i. The Respondent is hereby found liable.
 - ii. The Respondent is ordered to compensate the Complainant, the sum of **KES 200,000/- (Two Hundred 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 26th day of April 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER



