



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0264 OF 2025

EVELYN OMBWEGEH.....COMPLAINANT

-VERSUS-

COOPERATIVE BANK OF KENYA 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 Office received a complaint from the complainant alleging that the Respondent has been sending her messages informing her that her Coop tills was dormant, yet she has never opened any payment till numbers with the Respondent. To her no till number is associated to any of her accounts with the Respondent bank.

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 21st February 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the complaint filed against it. The notification of complaint to the Respondent was issued on 13th March 2025 vide letter referenced **ODPC/CIE/CON/2/1 (140)**. 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) Provide any relevant materials or evidence in support of the response.
 - c) The lawful basis relied upon to express the complainant's personal data.
 - d) Evidence as to whether the Complainant was aware of the creation and use of the coop till services
 - e) An elaborate representation of how data subjects can exercise their rights in relation to data protection

187

- f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrences mentioned in the complaint do not take place again.
8. The Respondent responded to the notification letter via a letter dated 3rd April 2025.
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 Complainant concerns the Complainant's allegations that the Respondent has been sending her messages informing her that her Coop tills was dormant, yet she has never opened any payment till numbers with the Respondent. To her, no till number is associated with any of her accounts with the Respondent bank.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

11. It was the Complainant's case that on numerous occasions, the Respondent sent her messages informing her that her till number had been dormant for a long period and it was being closed. The Complainant stated that these messages surprised her as she had never given instructions to the Respondent to open till numbers for her bank accounts, which she opened sometime in 2017 and 2018.
12. The Complainant further contended that upon receiving the numerous messages, she contacted the Respondent, who informed her that the till was automatically created and attached to the Respondent's account for ease and convenience. The Respondent's representative further directed the Complainant to visit the nearest branch with her national ID card to activate the till.

ii. THE RESPONDENT'S RESPONSE

13. The Respondent contended that as part of its value addition, the till numbers are provided to their clients as a more convenient number to facilitate transactions thereby helping to minimize errors when receiving money or depositing funds into their account.
14. The Respondent also stated that upon receiving the complaint from the Complainant, it proceeded to disable the Complainant's assigned till numbers. And halted the SMS communications to her.
15. The Respondent further stated that the till is highly correlated with the bank account number, and as per their privacy statement, no further consent was needed for that. To the Respondent, the till is managed solely by it and no third party is not involved.

F. ISSUES FOR DETERMINATION

16. 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.

I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT.

17. It was the Complainant's position that she had never given the Respondent any instructions to open the till numbers attached to her bank accounts. She was not informed and did not authorize the opening of the till numbers attached to her bank accounts.
18. It was the Respondent's position that, as part of its value addition, by its own volition, it provided the till numbers to its clients as a more convenient number to facilitate transactions. As such, it contended that there was no need to get the Complainant's authorization.

19. Section 26 of the Act provides for the rights of a data subject under the Act. it provides:-

A data subject has a right-

- a) To be informed of the use to which their personal data is to be put*
- b) To access their personal data in custody of data controller or data processor*
- c) To object to the processing of all or part of their personal data*
- d) To correction of false or misleading data; and*
- e) To deletion of false or misleading data about them. (emphasise supplied)*

20. From the evidence adduced to this Office, it is evident that at all material times when the Respondent did not inform the Complainant about the creation of the till numbers attached to the Complainant's bank accounts. The Respondent proceeded on its own volition without informing the Complainant of the creation of the till accounts. It was only after the Complainant started receiving messages about the purported dormant accounts she had that she became aware of the till numbers.

21. Notwithstanding the right to be informed as espoused above, the Office takes cognizance of the Respondent's legitimate interest to conduct its business. The Respondent averred that the Coop till was automatically allocated to the Complainant for ease of funds transfer vide their pay bill. Further, the Respondent informed the Complainant that if she wished to activate the Coop till she had to visit the nearest branch to do the same.

22. Moreover, the investigations also established that the Co-op till number is provided to all the Respondent's clients as a more convenient number to facilitate transactions.

23. This Office, therefore, finds that as far as issue no (i) is concerned, the Respondent did not inform the Complainant of the use to which her personal data was to be put.

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

24. 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.

25. As her relief, the Complainants sought that she be compensated for breach of trust and illegal use of her data. The Respondent did not make any representations concerning this Complainant's claim.

26. 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.

27. Having found that the Respondent violated the Complainant's right to be informed of the use to which her personal data was to be put; the Respondent is hereby directed to compensate the Complainant the amount of **KES 50,000/= (Fifty Thousand Shillings Only)**.

G. FINAL DETERMINATION

28. In the ultimate, the Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable for violating the Complainant's right to be informed of the use to which her personal data was to be put.
- ii. The Respondent is ordered to compensate the Complainant **KES 50,000/= (Fifty 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 21st day of April. 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**



