



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0119 OF 2025

IBRAHIM LIMO.....COMPLAINANT

-VERSUS-

SENECA EAST AFRICA 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 Complainant lodged a complaint with the Office on 24th January 2025, asserting that the Respondent unlawfully processed his photos and placed them on social media pages to market its services 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 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 24th January 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 17th February, 2025 and referenced ODPC/CIE/CON/2/1 (074). 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. Any relevant materials or evidence in support of your response above
 - d. Whether the Complainant consented to the publishing of his images on your website and social media platforms for commercial purposes;
 - e. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant if any;

- f. Any other relevant information they wish the Office to consider.
8. The Respondent submitted their response vide a letter dated 24th February 2025.
9. This determination is therefore as a result of analysis of the complaint as received, the respondent responses and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. It is the Complainant averments that the Respondent unlawfully processed his personal photos and used on their social media platform pages to market their services without long due after his employment.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant asserts that he is aggrieved by the continued use of his image on the Respondent's website and social media platforms.
12. The Complainant contends that he was employed by the Respondent from 1st July 2022 until his dismissal on September 30, 2022.
13. The Complainant states that the Respondent utilized his images on their website without obtaining his permission and continued this use even after his dismissal.
14. The Complainant further purports that, in June 2022, his image was prominently featured on the Respondents Instagram page to advertise their services during their campaign period. Additionally, he claims that his image was used to promote VIP protection services, which occurred long after his termination of employment.
15. The Complainant sought the following remedies from this Office:
- i) Damages for breach of privacy and use of the Complainant's images without consent.
 - ii) An Enforcement/Penalty Notice against the Respondent.
16. The Complainant provided a screenshot of his images as posted on the Respondent website to support his complaint.

ii. THE RESPONDENTS' RESPONSE

17. The Respondent submitted their response to the allegations vide a letter dated 25th February 2025.
18. In their response the Respondent acknowledges receiving of complaint regarding the alleged unauthorized use of the Complainant image on their website.
19. The Respondent asserts that the Complainant was employed by the Respondent from 29th February 2015 until his termination on 30th September 2022.
20. They contend that they express regret for any oversight that led to the continued display of the Complainant's image on their website, which was ultimately suspended on 2nd December 2024. The Respondent further contends that during that suspension period, no images were displayed and a maintenance notice was posted.
21. Additionally, they assert that on 25th November 2024, the Respondent received a similar complaint from a former employee, who was represented by the same legal firm as the Complainant. In response to this, the Respondent notified the relevant authorities, suspended the website, and reached out to the former employee to resolve the matter amicably.
22. The Respondent categorically states that, upon receiving communication from the Office, they acted promptly by contacting the Complainant, and that the website has since been suspended following the former employees Complaint.

F. ISSUES FOR DETERMINATION

23. In light of the above, the following issues fall for determination by this Office:
 - i. Whether the Respondent fulfilled its obligation under the Act
 - ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

24. In addressing this issue, the Office will address the question whether the Respondent Processed the Complainant's data in accordance with the requirements for commercial use under the Act.
25. Section 37(1) of the Act prohibits the use of personal data for commercial purposes unless the data subject has provided **express consent** or the use is permitted by law, and the data subject is informed at the time of data collection.
26. Further Regulation 14 elaborates that commercial use includes the use of personal data to advance commercial or economic interests, such as marketing, promotions, or advertising. This includes the use of personal data for direct marketing, advertisements, or any other marketing activity aimed at promoting a service or product.
27. In this case the Complainant's employment with the Respondent ended on 30th September 2022 but the Respondent continued to use the Complainant's image on its website and social media for marketing and promotional purposes. The Respondent admitted that this continued use was an oversight and only took corrective action after the matter was brought to their attention in December 2024.
28. The continued use of the Complainant's image falls squarely within the definition of commercial use under Regulation 14 of the Data Protection (General) Regulations. The image was used in marketing campaigns to promote the Respondent's services, directly advancing their commercial interests. This constitutes a breach of Section 37(1), as the Respondent did not obtain the Complainant's express consent for the use of his image post-employment.
29. Moreover, the Respondent admitted that it was an oversight on their end, and no legal basis existed to justify the use of his data after the employment contract had ended. Furthermore, the Respondent did not inform the Complainant of the intended use of his image beyond the scope of the employment, as required by the Act.
30. In conclusion, the Respondent's continued use of the Complainant's image for commercial purposes, without obtaining the Complainant's express consent and after the termination of his employment, constitutes a violation of Section 37 of

the Data Protection Act, 2019 and Regulation 14 of the Data Protection (General) Regulations.

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

31. 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.
32. The Complainant requested this Office to issue an award of compensation. 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.
33. 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.
34. In considering whether to issue compensation, this Office takes into consideration the use of Complainant's personal data for commercial purposes without consent.
35. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings five hundred Thousand (KES 500,000)** as compensation.

G. FINAL DETERMINATION

36. 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 Five Hundred Thousand (KES 500,000)** as compensation.

- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 23rd day of April. 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER



