



OFFICE OF THE DATA PROTECTION COMMISSIONER

**CONSOLIDATED ODPC COMPLAINTS NO. ODPC/COMP/0063/2025,
ODPC/COMP/0064/2025 & ODPC/COMP/0087 OF 2025**

PARTICK MATASI.....1ST COMPLAINANT
KENETH MUGUNA2ND COMPLAINANT
AUSTINE ODHIAMBO.....3RD COMPLAINANT

-VERSUS-

BETNARE.....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 Complainants lodged their complaints with the Office on 14th and 19th January 2025, asserting that the Respondent unlawfully processed their photos and images placed them on social media pages to market its services without their consent to advertise their product and endear them to public, particularly to football fans and gamblers.

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 14th and 29th 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 9 of Enforcement Regulations the Office considered the Complaints jointly as they raise similar issues against the same Respondent.
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondents of the complaint filed against them *vide* a letters dated 30th January, 2025 and 5th February 2025 referenced ODPC/CIE/CON/2/1 (014) and ODPC/CIE/CON/2/1/ (040). 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. Provide relevant material in support of your evidence;
 - c. Details of on how you obtained the Complainants image.
 - d. The contractual agreement with the Complainant if any
 - e. Whether the Complainants were notified and expressly consented to the use of their images for commercial purposes.
 - f. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant if any;
 - g. Any other relevant information they wish the Office to consider.
9. The Respondent submitted their response vide a letter dated 24th February 2025.
10. This determination is therefore as a result of analysis of the complaint as received, the respondent responses and investigations conducted by the Office, and also pursuant to regulation 9 1 (a) of Enforcement Regulations.

D. NATURE OF THE COMPLAINT

11. The Complaint relates to the Respondent alleged unlawful processing the Complainants photos and used on their social media platform pages to market their services without obtaining consent from the Complainants.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

12. The Complainants contend that they are, unequivocally, renowned international Kenyan international football players.
13. The Complainants assert that they encountered a social media poster featuring their image on the official web-page, as well as the Facebook and Instagram accounts of the in the Respondent betting firm trading under name Bet Nare.
14. The Complainants aver that the Respondent, without their knowledge or consent, utilized their image or likeness in advertisement with the intention of promoting its betting products and services and endearing itself to the public, particularly to football fans and gamblers.

15. The Complainants contend that the impugned advertisement prominently displayed their image or likeness accompanied by words "Predict & Win," suggesting an endorsement or association between the Complainant and the Respondent betting activities.
16. The Complainants further aver that upon making inquiries, they discovered that the Respondent had unlawfully processed their personal data, specifically by publishing a photograph depicting their images and likeness on its various social media platforms without seeking, obtaining or securing their prior informed consent, or providing them with the requisite notice in compliance with applicable data protection law.
17. The Complainants purport that the Respondent actions amount to a gross violation of tier data protection rights, their rights to privacy, and their right to control the commercial use of their images and likenesses
18. In addition to the complaint, the complainants sought the following redress:
- (a) Immediate cessation of the unlawful processing of his personal data. The Betting firm should be directed to remove the Complainant's photograph from the Betting firm's social media handles, webpages and websites and all online platforms, including the Betting firm's servers, without delay.
 - (b) An investigation by the Office of the Data Protection Commissioner into the conduct of the Betting firm to determine the extent of the breach and ensure that similar violations do not occur in the future.
 - (c) Sanctions and penalties against the Betting firm in accordance with Section 65 of the Act, given the blatant disregard for the Complainant's privacy rights and the data protection principles.
19. The complainants attached the following documents to support their complaint:

- Screenshots of the Complainant's images on the Respondent's Website and social media.
- A demand letter.

ii. THE RESPONDENT'S RESPONSE

20. The Respondents submitted their response to the allegations vide a letter dated 28th February 2025.
21. In their response the Respondent avers that that it is a duly licensed betting company providing an online platform for sports betting.
22. It contends that contrary to the allegations raised by the Complainants, it did not use the Complainants images pictures, or likeness for purposes of advertising its services.
23. The Respondent purports that the image in question was initially produced and distributed by the football Kenya Federation (FKF) during the 2024 kit unveiling for the Kenyan National Football Team and that the image had been widely circulated and was publicly available. To support this assertion, the Respondent relies on the Google reverse search image search, which demonstrate that the image was disseminated by FKF, various media outlets, and multiple players.
24. Additionally, the Respondent further states that the image was utilized solely to create awareness of the Group stage match between Kenya and Zimbabwe, held on 15th November 2024, and was deployed for commercial for commercial advertising purposes. It emphasizes that at no point were the Complaints presented as brand ambassadors for the Respondent.
25. Additionally, the Respondent avers that the visitors to its platform are primarily interested in sports events and betting odds, not individuals' images neither influenced customer engagement nor contributed to revenue generation, asserting that football fans and gamblers would have accessed the platform regardless of the image used.
26. Finally, the Respondent states that upon receipt of the Complaints the demand letter, it promptly removed the images from the its social media pages and has

since ceased its social media pages has since ceased any further use of the said images.

F. ISSUES FOR DETERMINATION

27. In light of the above, the following issues fall for determination by this Office:

- i. Whether the Respondent obtained express consent from the Complainants to process their personal data for commercial purposes.
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENT OBTAINED EXPRESS CONSENT FROM THE COMPLAINANTS TO PROCESS THEIR PERSONAL DATA FOR COMMERCIAL PURPOSES.

28. Section 2 of the Act defines consent as any manifestation of express, unequivocal, free, specific, and informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data.

29. The definition of the Act details the minimum criteria for consent to be that it must be certain that the individual has consented, and what they have consented to. This certainty requires more than just a confirmation that they have read and understood the terms and conditions. There must be a clear signal that they agree or have agreed to the processing. The unambiguity of the consent further links in with the requirement that consent must be verifiable to the extent that one must be able to demonstrate that the data subject consented to processing of their personal data.

30. Section 30 (1) (a) of the Act 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.

31. The Act goes further to state the conditions of consent. It states as follows with regard to the conditions of consent:-

RK

32. Conditions of consent

(1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.

(2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.

(3) the withdrawal of consent under sub-section(2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.

(4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on the consent of the processing of personal data that is not necessary for the performance of that contract. (emphasis ours)

32. On the issue of commercial use of personal data, the Act provides under Section 37 (1) (a) that a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person has sought and obtained **express consent** from a data subject.

33. Regulation 14 (1) of the General Regulations provides the interpretation of 'commercial purposes' and provides that for the purposes of Section 37 (1) of the Act, a data controller or data processor shall be considered to use personal data for commercial purposes where personal data of a data subject is used to advance commercial or economic interests, including inducing another person to buy, rent, lease, join, subscribe to, provide or exchange products, property, information or services, or enabling or effecting directly or indirectly, a commercial transaction.

34. In the case at hand, the Respondent a licensed betting company used the Complainants' images in a visual advertisement bearing the phrase "Predict & Win," and "Best odds," posted across its official website, Instagram, and Facebook platforms. The clear purpose of this display was to promote its gambling services by leveraging the credibility, recognition, and aspirational appeal associated with the Complainants.

35. Section 28(1) stipulates that personal data must, as a general rule, be collected directly from the data subject. While Section 28(2) provides narrow exceptions such as when data is publicly available these exceptions do not absolve the data controller from other obligations under the Act, particularly the where the data is used for commercial purposes.
36. Moreover, even if Complainants images were publicly accessible, they were intended solely for a national team activity. The Respondent clearly repurposed the images for commercial use to extend their business interests.
37. In view of the foregoing, it is evident that at all material times when the Respondent was handling the Complainants' data, it required the Complainants' express consent which it did not obtain when using their images.
38. This Office therefore finds that as far as issue no (i) is concerned, the Respondent did not obtain express consent from the Complainants to process his personal data for commercial purposes.

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

39. 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.
40. 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.
41. 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.
42. In considering whether to issue compensation, this Office takes into consideration the use of Complainants personal data for commercial purposes without consent.

nk

43. In this context, the Respondent is hereby ordered to pay the Complainants **Kenya Shillings One Million Five Hundred Thousand (KES 1,500,000)** as compensation as follows:

- i. Partick Matasi- **Five Hundred Thousand (KES 500,000)**
- ii. Keneth Muguna - **Five Hundred Thousand (KES 500,000)**
- iii. Austine Odhiambo- **Five Hundred Thousand (KES 500,000)**

44. Additionally, the Office takes cognizance of the Respondent's prompt action of taking down the Complainant's images from their social media sites as soon as the issue was raised.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable for use of Complainants images for commercial purposes without consent.
- ii. The Respondent to pay the Complainants a sum of **Kenya Shillings One Million Five Hundred Thousand (KES 1,500,000)** 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 28th day of April 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

