



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0301 OF 2025

ANN WAMBUI KAHWAI .....COMPLAINANT

-VERSUS-

ZILLIONS CREDIT LIMITED .....RESPONDENT

### DETERMINATION

*Under 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 complaint pertains to allegations that the Respondent has been contacting the Complainant without her consent and sending unsolicited messages in an attempt to recover a debt for facilities she neither borrowed nor had prior knowledge of or consented to.

#### **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 17<sup>th</sup> March 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 Respondent of the complaint filed against it *vide* a letter dated 17<sup>th</sup> March 2025 and referenced **ODPC/CIE/CON/2/1 (161)**. 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 as regards the complaint.
  - c. Provide any relevant materials or evidence in support of your response.
  - d. Confirmation whether the mobile numbers 079\*\*\*\*\*61 and 074\*\*\*\*\*47 belonged to themselves/ their agents.

- e. The legal basis relied upon to process and engage with the Complainant's data.
  - f. Proof of consent from the Complainant to send her numerous messages and calls.
  - g. A detailed description of how you fulfill the rights of a data subject.
  - 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.
  - i. Any other relevant information it wishes the Office to consider.
8. The Respondent responded to the Notification of Complaint letter *vide* a letter dated 26<sup>th</sup> March 2025.
  9. This determination is therefore 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 Complainant alleged that she was contacted by the Respondent regarding a loan that she was unaware of. She further alleged that the calls and text messages were both harassing and threatening in nature for the payment of the outstanding loan debt despite not being a guarantor.

#### **E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

##### **i. THE COMPLAINANT'S CASE**

11. The Complainant states that she received a call from gentleman who introduced himself as the Respondent representative.
12. She avers that he indicated that he was calling her in relation to a loanee who is yet pay their loan.
13. The complainant avers that despite informing the Respondent that she was not the individual they were looking for, they alleged that her name was listed by the actual loanee as a guarantor without her knowledge or consent.

14. The Complainant categorically states that she never received any request or provided consent, in any way or form, to be listed as a guarantor for the said loan.
15. Further, the complainant alleges that on their very first call, representatives of the Respondent threatened her, and since then, they have continued to call her countless times, often using a private number, causing her undue stress and harassment.
16. The Complainant stated that the Respondent contacted her using mobile number 079\*\*\*\*\*61 to call her and 074\*\*\*\*\*47 to text her.
17. The Complainant avers that the Respondent actions were in Violation of the Data Protection Act and the CBK Digital Credit Providers Regulations.
18. The Complainant prays for the following remedies.
- a. That the Respondent be found liable for violation of data protection laws in relation to lawful collection and processing of personal data and engaging in threats in the course of debt collection.
  - b. Award for damages for mental distress suffered due to their constant harassment.
19. The Complainant provided screenshots of the said messages and phone calls as evidence.

## **ii. THE RESPONDENT'S RESPONSE**

20. The Respondent submitted a response to the notification of complaint in a letter dated 26<sup>th</sup> March, 2025.
21. In the response, the Respondent avers that a thorough investigation had been conducted, revealing that the messages in question were sent by mistake to the complainant when they were actually intended for a different customer, identified as J\*\*\*\*\* W\*\*\*\*\*.
22. The Respondent acknowledged that the messages were incorrectly sent by one of their collection agents. Despite having received extensive training in ethical debt collection practices and the provisions of the Data Protection Act of 2019, the agent failed to exercise the necessary due diligence in verifying the

customer's details before making follow-up contact regarding an alleged unpaid loan.

23. Additionally, the Respondent states that the agent lacking proper authorization, did not accurately verify the customer information before initiating any debt recovery actions against the complainant, who was not in default.
24. The Respondent asserts that the complainant was wrongly informed that they were a guarantor for a Zash Loan. It clarified that Zash Loan only collects customers' personal data and does not require collateral or guarantees. Furthermore, data is not shared with third parties except as outlined in the terms and conditions.
25. Regarding the alleged phone calls made to the complainant, the Respondent states that these calls were the result of an error by the agent, who mistakenly identified the complainant as the defaulting client. This error stemmed from improper verification of customer data prior to communication, emphasizing that the calls should have been directed to the actual customer, J\*\*\*\*\* W\*\*\*\*\*, who has an overdue loan.
26. The Respondent also notes that, in response to the complaints raised by the complainant, it has since organized its customer data more accurately to prevent any instances of data mix-up and categorization errors. This ensures that their agents only take action on the correct cases and customers.
27. Finally, the Respondent mentioned that it has implemented data protection training for its collection agents to refresh their knowledge of lawful data processing according to the Data Protection Act, emphasizing the importance of accurate data handling during debt collection procedures.
28. The Respondent provided the following documents as evidence:
  - a) Privacy policy
  - b) standard contract entered into with digital borrowers.

## **F. INVESTIGATIONS UNDERTAKEN**

29. The Office examined the complaint lodged by the Complainant, including screenshot of text messages and calls adduced in support thereof, the

Respondent's written response, and all documents submitted by both parties as evidence.

## **G. ISSUES FOR DETERMINATION**

30. It is not in contention that the Respondent contacted the Complainant despite not being neither a borrower nor a guarantor.

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

- i. Whether the Respondent violated the Complainant's rights under the Act and attendant Regulations.
- ii. Whether the Respondent fulfilled its obligations under the Act and the attendant Regulations.
- iii. 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**

32. Section 26 (a) of the Act provides for the right to be informed of the use to which a data subject's personal data is to be put.

33. The Respondent, by not informing the Complainant of the use to which her personal data was to be put at the point of collection of the personal data, violated her right to be informed. The Respondent collected the Complainant's mobile number and used it to contact the Complainant without a lawful basis.

34. From the foregoing, this Office finds that the Complainant's right to be informed under Section 26(a) of the Act was violated by the Respondent.

### **II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT**

35. The Respondent is a data controller as per the definitions of the Act and is therefore mandated to fulfil its obligations as such under the Act.

36. Section 30 of the Act provides for the lawful basis of processing personal data and states 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 the purposes listed in subsection 1 (b). The Respondent failed to establish that the Complainant has consented to the processing of her personal data or that Section 30(1)(b) of the Act applied to the processing.

37. The Complainant indicated that she did not consent to be listed as a guarantor for the loan, further she was not informed of such use of her data. The Respondent acknowledged that their agent made an error but failed to provide any proof of consent as required by Section 30(1)(b).

38. Moreover, the Respondent contends that the Complainant had previously registered with their services. However, this does not absolve The Respondent of their obligation to process her data in accordance with the Act. Utilizing the Complainant's personal data to contact her about a loan she did not guarantee constitutes a violation of lawful processing as defined by the Act.

39. Additionally, the Respondent failed to uphold their responsibility of maintaining accurate records, as mandated by Section 25(f) of the Act. The misrepresentation by their agent highlights a significant lapse in due diligence concerning the verification of the accuracy and relevance of the data before proceeding with its use.

40. Even if the Complainant had indeed registered, her personal data should have been utilized solely for the specific purposes for which she provided consent. Reaching out to her regarding a loan she did not guarantee infringes upon the principle of purpose limitation outlined in Section 25(d).

41. Section 29 of the Act provides an obligation to data controllers or data processors of the duty to notify the data subject. Notably, the data subject has to be informed of, *inter alia*;

- i. rights specified under Section 26;
- ii. the fact that personal data was being collected;
- iii. the purpose of collection of their personal data;

- iv. a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data.

42. As stipulated under Section 29, the Respondent was obligated to inform the Complainant if her data was being processed for a different purpose or if there were any changes to the processing conditions. The Respondent thus failed to fulfil this obligation under Section 29 of the Act.

43. From the foregoing, this Office finds that the Respondent failed to uphold their responsibility of maintaining accurate records, as mandated by Section 25(f) of the Act, failing to establish that the Complainant has consented to the processing of her personal data under Section 30(1)(b) of the Act and failing to fulfil their duty to notify the Complainant under Section 29 of the Act.

### **III. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.**

44. Pursuant to Regulation 14 (2) of the Enforcement Regulations, a determination shall state the remedy to which the complainant is entitled. The remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.

45. 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.

46. 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.

47. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right under Section 26 (a) were infringed upon by the Respondent. The Respondent failed to inform the Complainant the use of her personal data and kept sending messages without a lawful basis.

48. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000)** for the infringement of her rights under the Act.

49. Having found that the Respondent failed to fulfill its obligations under the Act and attendant regulations, **an Enforcement Notice shall issue against the Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

#### H. FINAL DETERMINATION

39. The Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable for infringement of the Complainant's rights right to be informed under Section 26(a) of the Act.
- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000)** as compensation.
- iii. An Enforcement Notice to hereby be issued to the Respondent.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 14<sup>th</sup> day of June 2025.



**IMMACULATE KASSAIT, MBS**  
**DATA COMMISSIONER**

**KENYA**

