



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0238 OF 2025

ERIC MUNENE NJUGUNA.....COMPLAINANT

-VERSUS-

CHAPEO CAPITAL LIMITED (ZK PESA)1ST RESPONDENT

ERICSON LUBALE OKOTA.....2ND 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 submitted a complaint to the Office alleging that the 1st Respondent unlawfully processed his personal data by designating him as a loan guarantor, using information provided by the 2nd Respondent, which they never verified and did so without informing him or obtaining 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 19th February 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 13th March 2025 and referenced ODPC/CIE/CON/2 /1 (143) and ODPC/CIE/CON/2 /1 (144) Respectively. In the Notification of the Complaint, the Respondents were informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondents were asked to provide this Office with the following: -
 - a. A detailed response to the allegations made against them by the Complainant;
 - b. Any relevant materials or evidence in support of the response above
 - c. Details on how they obtained the Complainant's personal details
 - d. Whether the Complainant consented to be listed as a guarantor to the alleged loan.

- e. 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; and
 - f. Any other relevant information they wish the Office to consider.
8. The 1st Respondent submitted its response vide letter dated 4th April 2025 and the 2nd Respondent remained non-responsive.
9. This determination is therefore as a result of analysis of the complaint as received and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The Complainant submitted a complaint to the Office on 19th February 2025, alleging that the 1st Respondent unlawfully processed his data by designating him as a loan guarantor, using information provided by the 2nd Respondent, which they never verified, and did so without informing him or obtaining his consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant asserts that on September 18, 2024, at approximately 07:58 a.m., he received a call from the 1st Respondent's agent who demanded that he ensures the 2nd Respondent repaid a Kshs 2,000 loan or pay it himself.
12. The Complainant contends he had no knowledge of this arrangement since he had never met the 2nd Respondent nor consented to be his guarantor. When the Complainant purportedly advised the 1st Respondent's agent to verify whether he was calling the correct person, and he hanged up because he had a court session, and that the agent called again at around 08:40 a.m using demeaning language such as "*nyinyi lipeni deni muwache kujifanya.*"
13. The Complainant contends that he believed that it was a case of mistaken identity and so advised that the agent he was an advocate of the High Court of Kenya and the number he was calling was an official number belonging to his firm and as such cannot be used in such dealings and such ought to produce evidence of consent.

14. When questioned about verification procedures, the Complainant alleges the 1st Respondent's agent admitted they merely checked that the Complainant's phone number matched the name saved in the 2nd Respondent's phonebook without conducting proper due diligence or obtaining prior consent, which the Complainant contends created anxiety about what other information might have been shared, particularly given that the number is used for official and privileged communications.
15. The Complainant asserts he contacted the 2nd Respondent at 08:48 a.m who allegedly confirmed they were strangers yet refused to explain how he obtained the Complainant's number, though he purportedly promised to repay the loan promptly. The Complainant alleges the 2nd Respondent later sent a message stating "*pole mkubwa hautapigiwa simu tena nimemalizana nao*" and attempted another call which the Complainant could not answer due to a court session.
16. The Complainant contends that neither the 2nd Respondent nor the 1st Respondent obtained his "express, unequivocal, free, specific, and informed consent" for processing his data, which he alleges violated multiple provisions of the Data Protection Act of 2019, including sections 26(a), 26(b), 28(1), 28(3), and 29(b). Additionally, the Complainant purports he was denied his rights under Article 47(2) of the Constitution since no written notice was provided despite actions that affected his rights to privacy and property.
17. The Complainant asserts he sent a demand letter dated October 2, 2024, whereby the 2nd Respondent allegedly responded through his advocates expressing remorse, while the 1st Respondent purportedly stated they assumed consent had been obtained and regretted any inconvenience, yet the Complainant contends neither fully addressed the illegal data use. Despite the Complainant's alleged explicit demand for deletion of illegally obtained data, he claims the 1st Respondent illogically requested he make a separate request for data deletion. The Complainant alleges he subsequently filed a police report (OB no. 128/17/12/2024) as the matter remains under investigation.
18. The Complainant contends there have been reports of cybercriminals stealing business owners' IDs, phone and house details as reported in the Business Daily

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of February 2, 2025, which he alleges has increased his concerns about possible data theft. The Complainant asserts he has been receiving targeted in-app advertisements from the 1st Respondent, which he alleges could be proof of algorithm-targeted advertisements from mined data.

19. The Complainant alleges the 1st Respondent's information and communication technology systems are capable of reading messages and communications, which he contends puts privileged client information at risk. The Complainant further asserts that entities like the 1st Respondent typically request data from credit reference bureaus, which he alleges means they likely obtained other financial data to assess his ability to pay.
20. The Complainant contends his mobile number is exclusively used for official purposes by his law firm and is registered with the judiciary e-filing portal, Ecitizen platform, Ardhi Sasa platform, and the law firm's client bank accounts, which he alleges makes this data breach particularly concerning and exposing him to potential data and money theft.
21. The Complainant alleges the 1st Respondent exclusively targets customers' financial data as explained in their privacy policy, which he contends translates to his financial data and potentially clients' data being in the first Respondent's possession, threatening his constitutional rights to privacy under Article 31 and property under Article 40.
22. The Complainant asserts he is pursuing a chartered financial analyst qualification at Oshwal College with career aspirations in the financial services sector, and he contends that due diligence by entities in this sector would reveal he guaranteed mobile loans with a number associated with a client account, which he alleges questions his financial discipline and fetters his career prospects and right to property.
23. The Complainant alleges such practices by the 1st Respondent could interfere with his credit ratings and result in negative listings. He further contends these actions constitute data mining with potentially drastic consequences for unsuspecting Kenyans, referencing a similar case (ODPC complaint number 908 of 2024) which he alleges demonstrates such practices are widespread.

24. The Complainant asserts that while the 2nd Respondent obtained a financial boost and the 1st Respondent benefited from business and interest, he allegedly lost precious legal time, money in the form of airtime, and used his professional services to ensure the 2nd Respondent settled the loan, which he contends is a loss on his part.
25. The Complainant alleges he has suffered financially and psychologically from the Respondents' actions, experiencing continued anxiety and distress from daily in-app advertisements, potential future legal suits due to disclosure of privileged information, and physical pain and reduced productivity resulting from the psychological torture. The Complainant further notes the 1st Respondent's own privacy policy states they do not require guarantors for mobile loans, which he contends raises questions about why his data was accepted from the 2nd Respondent.
26. The Complainant prayed for the following remedies:
- i. That an enforcement notice be issued compelling the respondents and any third parties with whom they shared my data to erase any and all data received about myself from their databases with immediate effect.
 - ii. Compensation from the respondents jointly and severally for violating my rights to privacy under article 31 c & d of the constitution, as well as violating my rights as a data subject under the Data Protection Act.
 - iii. Compensation from the respondents jointly and severally for the financial loss occasioned to myself and the law firm, as particularized in the Complaint.
 - iv. Compensation from the respondents jointly and severally for the psychological torture and distress occasioned to me, as particularized in the Complaint.
 - v. Compensation from the respondents jointly and severally for using my data for unlawful and unauthorized gainful commercial purposes without consent or compensation.
 - vi. Punitive damages against ZK PESA for the continued practice of using unsuspecting Kenyans' data to guarantee loans to their clients without verifying such data, despite the decision in ODPC complaint number 908 of 2024, LAWRENCE KARUTHI VS MULLA PRIDE LIMITED, condemning such conduct.

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- vii. Aggravated damages from ZK PESA for using data belonging to a law firm to guarantee a loan, despite the fact that they do not require guarantors for their mobile loans.
- viii. Any other remedy this office deems fit to grant me

ii. THE 1st RESPONDENTS' RESPONSE

27. The 1st Respondent submitted their Response to the Office vide a letter dated 4th April 2025 in which they submitted that:

28. The 1st Respondent operates within strict ethical guidelines and regulatory compliance frameworks. In response to the allegations raised, the 1st Respondent avers that their debt collection practices strictly prohibit threatening or harassing messages to customers or third parties, unsolicited communications beyond legal parameters, and unauthorized sharing of personal customer data. The company purports to maintain robust internal Quality Assurance monitoring systems that ensure adherence to Central Bank of Kenya Regulations and the Data Protection Act, with all communications being logged for accountability purposes.

29. Regarding customer communication and consent, the 1st Respondent contends that all contact details are provided voluntarily by customers and are utilized exclusively for loan-related purposes. The Respondent avers that any outreach to emergency contacts remains strictly within legal boundaries and emphasizes that they do not engage in unauthorized third-party disclosures of customer information.

30. On the matter of loan transparency, the 1st Respondent purports that allegations of misrepresentation regarding loan repayment structures are unfounded. The 1st Respondent contends that all loan terms, including comprehensive repayment schedules, applicable interest rates, and associated charges, are clearly displayed within their mobile application prior to loan disbursement. The 1st Respondent avers that customers are required to review and explicitly accept these terms before proceeding with any loan application, and that their customer support team remains available to address any confusion regarding loan repayment structures.

31. Concerning data protection compliance, the 1st Respondent contends that it maintains strict protocols against disclosing customer information to unauthorized entities. The 1st Respondent purports that customer data protection is ensured under the Data Protection Act of 2019, with access to sensitive customer information limited exclusively to authorized personnel. The 1st Respondent avers that should the complainant possess specific evidence of data breaches; they welcome the opportunity for Office to share such details to facilitate a comprehensive internal investigation.
32. In Response to this complaint, the 1st Respondent contends that they have proactively initiated several corrective and preventive measures. These include enhanced staff training programs to reinforce strict compliance with data protection and ethical collection practices, stronger internal monitoring systems with increased oversight of customer interactions, improved customer awareness initiatives to ensure comprehensive understanding of loan terms, and policy refinements involving thorough review and updating of data handling protocols.
33. The 1st Respondent purports that it remains steadfastly committed to upholding the highest ethical and regulatory standards within the financial services industry. The 1st Respondent contends that they maintain full cooperation with the Office of the Data Protection Commissioner and welcome continued engagement to resolve this matter satisfactorily for all parties involved.

F. ISSUES FOR DETERMINATION

34. It is not in contention that the, that the 1st Respondent unlawfully processed the Complainants personal data by designating him as a loan guarantor. This designation was made using information provided by the 2nd Respondent, which was never verified, and the 1st Respondent did so without informing the Complainant or obtaining his consent.

35. 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 attendant regulations.
- ii. Whether the Respondents fulfilled its obligations under the Act.
- 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

36. 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.

37. The Respondents never informed the Complainant that his personal data was being collected and used as a loan guarantor. The Complainant only became aware when he was called and told to remind the 2nd Respondent to pay his loan or the Complainant pay for the said loan himself. The 1st Respondent failed to comply with Section 26(a) which requires informing the data subject of the intended purpose of data processing.

38. The 1st Respondent by not informing the Complainant of the use to which his personal data was to be put, at the point of collection of the personal data, violated his right to be informed.

39. Similarly, the 2nd Respondent by listing the Complainant's details to the 1st Respondent as a guarantor without his consent violated his right to be informed.

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

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

41. In addressing this issue, the Office will address the following questions –

- a. Did the 1st Respondent process the Complainant's personal data in accordance with the principles of data protection?

- b. Did the 1st Respondent in processing of the Complainant's personal data meet the threshold for indirect collection of personal data as required and the Act?
- c. Did the 1st Respondent fulfil its duty to notify?

Did the 1st Respondent process the Complainants personal data in accordance with the principles of data protection?

42. The 1st 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.

43. The 1st Respondents had an obligation under Section 25 of the Act to ensure that the Complainant's personal data is, amongst others: -

- i. processed in accordance with their right to privacy;
- ii. processed lawfully, fairly and in a transparent manner in relation to the data subjects;
- iii. collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes; and
- iv. collected only where a valid explanation is provided whenever information relating to private affairs is required.

44. The 1st Respondent violated key data protection principles under Section 25 by unlawfully processing the Complainant's personal data for an unauthorized purpose. The unauthorized use of the Complainant's personal data was for processing as a loan guarantor for a loan he was not privy to nor aware of.

45. Additionally, Section 30 of the Act 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. The 1st Respondent processed the Complainant's personal data without obtaining consent from the Complainant. The 1st Respondent further failed to discharge the burden of obtaining valid consent as required under Section 32 of the Act.

46. The Office therefore finds that the 1st Respondent did not establish a lawful basis for processing the Complainant's personal data.

Did the 1st Respondent in processing of the Complainant's personal data meet the threshold for indirect collection of personal data as required and the Act?

47. In collecting personal data, the 1st Respondents is mandated by Section 28(1) of the Act to collect the data directly from the data subject. Section 28(2) sets out instances where personal data may be collected indirectly –

- i) the data is contained in a public record.
- ii) the data subject has deliberately made the data public.
- iii) the data subject has consented to the collection from another source
- iv) the data subject has an incapacity, the guardian appointed has consented to the collection from another source
- v) the collection from another source would not prejudice the interests of the data subject.

48. The 1st Respondent unlawfully collected and processed the Complainant's personal data in clear violation of Section 28 of the Data Protection Act in the following aspect:

- i. Failure to collect data directly from the data subject. The 1st Respondent acquired the Complainant's personal data without his knowledge or consent, rather than obtaining them directly from him.
- ii. The 1st Respondent failed to demonstrate that the Complainant's personal data was publicly available or deliberately made public by the Complainant, making the collection unlawful.
- iii. The Complainant did not provide any consent for the 1st Respondent to collect his data from any source.

49. In light of the above the 1st Respondent did not meet the threshold for indirect collection and processing of the Complainant's personal data.

Did the 1st Respondent fulfil the duty to notify?

50. Further, 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. the third parties whose personal data has been or will be transferred to, including details of the safeguards adopted; and
- v. a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data.

51. The 1st Respondent had a duty to notify the Complainant of his rights under the Act, the fact that his mobile phone number was being collected for purposes of listing him as a guarantor to a loanee, and the measures it has in place to ensure the safety of his personal data. The 1st Respondent failed to fulfil this obligation under Section 29 of the Act.

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

52. 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.

53. The Complainant prays for the Office to issue an award of compensation and a request for his data to be deleted on the 1st Respondent data base.

54. With regards to the award of compensation, Section 65 of the Act provides for compensation to data subjects and states, "*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.*"

55. Section 65(4) of the Act states that, "*damage includes financial loss and damage not involving financial loss, including distress.*"

56. Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

57. In considering whether to issue compensation, this Office takes into consideration the fact that the 1st Respondent either intentionally or negligently violated the Complainant's right to be informed and the unlawful processing of his personal data.

58. The Office hereby orders the 1st Respondent to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES. 250,000/=)** as compensation.

59. Having found that the 1st Respondent failed to fulfill its obligations under the Act and attendant regulations, **an Enforcement Notice shall issue against the 1st Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

60. With regards to the 2nd Respondent, he assumed controller responsibility by disclosing the Complainant's personal data without obtaining his consent. This constitutes an offence under Section 72 of the Act. Section 72 provides that a data controller who, without lawful excuse, discloses personal data in any manner that is incompatible with the purpose for which such data has been collected commits an offence. In that regard, an order for referral for prosecution ensues under the Act and attendant Regulations.

G. FINAL DETERMINATION

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

- i. The Respondents are hereby found liable for infringement of the Complainant's right to be informed under Section 26(a) of the Act and failure to fulfil its obligations under the Act and the attendant Regulations.
- ii. The 1st Respondent is hereby ordered to pay the Complainant Kenya Shillings **Two Hundred and Fifty thousand (KES. 250,000/=)** as compensation.
- iii. An enforcement notice to hereby be issued to the 1st Respondent.

- iv. A recommendation for prosecution is hereby made against the 2nd Respondent.
- v. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 19th day of May 2025.

