



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0455 OF 2025 CONSOLIDATED WITH ODPC

COMPLAINT NO. ODPC COMPLAINT NO. 0457 OF 2025

REBECCA ATIENO ODOCK.....1ST COMPLAINANT

BRENDA OCHIENG..... 2ND COMPLAINANT

-VERSUS-

JACKLINE WANJIRU.....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 complaints against the Respondent alleging that the Respondent unlawfully posted their personal images on two Facebook Pages; (Buyer Beware Kenya and Kitengela Residents) without their 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 '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

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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 complaints from the Complainants on 24th March 2025. The complaints were 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 *vide* letters dated 28th April 2025 referenced ODPC/CIE/CON/2/1 (246). The Office in the said Notification of Complaint requested the Respondent to furnish the Office with –
 - a) A response to the allegations made against it by the Complainants;
 - b) Evidence of a tenancy contract between the Respondent and the Complainants;
 - c) Any relevant materials or evidence in support of her response above;
 - d) Evidence as to whether the Complainants gave their consent to have their personal data processed on Facebook;
 - e) The lawful basis relied upon to process the Complainants' personal data;
 - f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainants, if any;
 - g) The mitigation measures adopted or being adopted to ensure that such occurrences mentioned in the complaint do not take place again; and

- h) Any other information she wished the Office to consider.
8. In the interest of fair justice, and pursuant to Regulation 11 of the Data Protection (Complaints Handling Procedures and Enforcement) Regulations, 2021, the Office further informed the Respondent of the options of -
- a. Reviewing the complaint and summarily resolving the same to the satisfaction of the Complainants, or
 - b. Resolving the complaint through mediation, negotiation and/or conciliation, as the alternative dispute resolution (ADR) mechanisms provided for by the Act and the Regulations.
9. The Respondent responded to the said letter of notification on 13th May 2025.
10. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021
11. Pursuant to Regulation 9 of the Enforcement Regulations the two complaints were consolidated and considered jointly.
12. This determination is therefore as a result of analysis of the complaints as received and investigations conducted by the Office

D. NATURE OF THE COMPLAINT

13. The Complainants alleged that the Respondent unlawfully posted their personal data on Facebook without their consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

1st Complainant's case

14. The 1st Complainant asserts that she is the owner of Apartment Number Block **** House **** situated in NHC Kileleshwa alongside Mander Road.
15. That she had rented the said apartment from the Respondent from early last year.

16. That unfortunately due to economic downturn, her government payments, which were her primary source of livelihood, were suspended, placing significant strain on her financial resources.
17. That as a direct consequence of this financial hardship, she regrettably fell into rent arrears, despite her best efforts to meet her obligations.
18. That she communicated all her challenges and kept all communication lines open, also paying monies to the Respondent whenever she could.
19. That despite keeping all communication lines open and engaging in a payment plan, the Respondent who uses the Facebook profile of J**** W****, posted matters that were in violation of her personal data rights.
20. That the Respondent made posts on two Facebook Groups; Buyer Beware Kenya (Original) Admin, A***, J*****, W*****, <https://www.facebook.com/share/p/15rYiEoi4s/> and Kitengela Residents, <https://www.facebook.com/share/p/15rNHuYGaF/>. The Buyer Beware group has 79,000 members and Kitengela Residents has 57,000 members.
21. That the Respondent in an act of gross disregard for her privacy and personal security, publicly posted that her daughter, the 2nd Complainant and her had subjected the Respondent to distress over the past 6 months.
22. That beyond making the above allegations, the Respondent escalated the violation of her privacy by publishing her personal images on the internet, images that she had never released for public viewing. Those images clearly displayed her face, exposing her to unwarranted scrutiny and placing her personal security at risk.
23. That further aggravating this privacy breach, the Respondent also disclosed her personal phone number 07*****83, a number registered under her official name. She averred that the unlawful dissemination of such personally identifiable information was a blatant breach of her data protection rights as enshrined under the Act, and constituted and unauthorized exposure of private data without her explicit consent.
24. That in an even more egregious act, the Respondent publicly disclosed the residential details of her apartment, directly jeopardizing her safety and that of her

family. She further averred that this reckless act placed her in an extremely vulnerable position, exposing her to potential harassment, stalking or even physical harm.

25. That as a direct and foreseeable consequence of these deliberate actions, she has since received hundreds of unsolicited phone calls and text messages from unknown individuals, many of these messages containing insulting, demeaning and distressing content, all triggered by the exposure of her personal information by the Respondent.

26. The 1st Complainant avers that her personally identifiable information was now widely circulated across the internet, permanently compromising her right to privacy and digital security. This unlawful publication and unauthorized processing of her personal data not only violates the Act, but also constituted a severe infringement of her fundamental rights under Article 31, which guarantees every citizen the right to privacy, including the right to not have their personal information unnecessarily revealed to the public.

27. She avers that the Respondent's actions amount to gross misconduct under Kenyan data protection laws, and their conduct had led to significant emotional distress, reputational harm and potential security risks to her and her family.

28. She avers that the Respondent further escalated the injury and violation by demanding a sum of Kshs. 200,000 as a condition for removing the privacy-violating posts. She stated that this coercive demand amounted to extortion and demonstrated a clear intent to exploit her distress for financial gain. That by conditioning the removal of these unlawful posts on a monetary payment, the Respondent deliberately aggravated the harm inflicted upon her, further compounding her emotional, reputational and financial suffering.

29. That the malicious act not only underscored the intentional and premeditated nature of the Respondent's conduct but also raised serious legal implications, including extortion, blackmail and continued breach of her data protection rights under the Act.

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30. That the Respondent took down the posts a day later, but by then the damage was already irreversibly done. Her personal information had already been widely disseminated, exposing her to harassment, security risks and reputational harm that couldn't simply be undone by deletion of the posts.

31. That the delayed removal does not erase the gross violation of her privacy and data protection rights, nor does it mitigate the psychological, emotional and financial distress that she had suffered. Once sensitive personal data is shared online, it becomes permanently accessible, archived and potentially exploited making the Respondent's actions all the more egregious.

32. That the sharing of her personal data online was done without her consent.

33. As part of her evidence, the 1st Complainant adduced:-

- a) Screenshots of WhatsApp messages between her and the Respondent;
- b) Screenshots of the Facebook posts where her personal data was shared.

2nd Complainant's case

34. The 2nd Complainant asserts that she is the owner of Apartment Number Block **** House **** situated in NHC Kileleshwa alongside Mandera Road.

35. She avers that her mother, (the 1st Complainant) had rented the residential premises from the Respondent from early last year.

36. That unfortunately due to economic downturn, her mother's government payments, which were her primary source of livelihood, were suspended, placing significant strain on her financial resources.

37. That as a direct consequence of this financial hardship, her mother regrettably fell into rent arrears, despite her best efforts to meet her obligations.

38. That as a 1st born, she tried her best to support her mother and pay whenever she could although it was not her primary obligation as she didn't even reside at the said premises.

39. That the 1st Complainant and herself communicated all challenges and kept all communication lines open with the Respondent, her mother also paid monies to the Respondent whenever she could.
40. That despite keeping all communication lines open and engaging in a payment plan, the Respondent who uses the Facebook profile of J**** W****, posted matters that were in violation of her personal data rights.
41. That the Respondent made posts on two Facebook Groups; Buyer Beware Kenya (ORIGINAL) Admin, Atty, Jackson, Wanjeri, <https://www.facebook.com/share/p/15rYiEoi4s/> and Kitengela Residents, <https://www.facebook.com/share/p/15rNHuYGaF/>. The Buyer Beware group has 79,000 members and Kitengela Residents has 57,000 members.
42. That the Respondent in an act of gross disregard for her privacy and personal security, publicly posted that the 1st Complainant, and her had subjected the Respondent to distress over the past 6 months.
43. That beyond making these allegations, the Respondent escalated the violation of her privacy by publishing her personal images on the internet. These images clearly displayed her face, exposing her to unwarranted scrutiny and placing her personal security at risk.
44. That further aggravating this privacy breach, the Respondent also disclosed her personal phone number 07*****02, a number registered under her official name. She averred that the unlawful dissemination of such personally identifiable information was a blatant breach of her data protection rights as enshrined under the Act, and constituted and unauthorized exposure of private data without her explicit consent.
45. That in an even more egregious act, the Respondent publicly disclosed the residential details of her apartment, directly jeopardizing the safety of the 1st Complainant.
46. That as a direct and foreseeable consequence of these deliberate actions, she has since received hundreds of unsolicited phone calls and text messages from unknown individuals, many of these messages containing insulting, demeaning and

distressing content, all triggered by the exposure of her personal information by the Respondent.

47. That her personally identifiable information was now widely circulated across the internet, permanently compromising her right to privacy and digital security. This unlawful publication and unauthorized processing of her personal data not only violates the Act, but also constituted a severe infringement of her fundamental rights under Article 31, which guarantees every citizen the right to privacy, including the right to not have their personal information unnecessarily revealed to the public.
48. That the Respondent's actions amount to gross misconduct under Kenyan data protection laws, and their conduct had led to significant emotional distress, reputational harm and potential security risks to her and her family.
49. That the Respondent further escalated the injury and violation by demanding a sum of Kshs. 200,000 as a condition for removing the privacy-violating posts. She stated that this coercive demand amounted to extortion and demonstrated a clear intent to exploit her distress for financial gain. That by conditioning the removal of these unlawful posts on a monetary payment, the Respondent deliberately aggravated the harm inflicted upon her, further compounding her emotional, reputational and financial suffering.
50. That the malicious act not only underscored the intentional and premeditated nature of the Respondent's conduct but also raised serious legal implications, including extortion, blackmail and continued breach of her data protection rights under the Act.
51. That the Respondent took down the posts a day later, but by then the damage was already irreversibly done. Her personal information had already been widely disseminated, exposing her to harassment, security risks and reputational harm that couldn't simply be undone by deletion of the posts.
52. That the delayed removal does not erase the gross violation of her privacy and data protection rights, nor does it mitigate the psychological, emotional and financial distress that she had suffered. Once sensitive personal data is shared

online, it becomes permanently accessible, archived and potentially exploited making the Respondent's actions all the more egregious.

53. That the sharing of her personal data online was done without her consent.

54. That the Respondent went further to quote her Company with which she does business and as such was facing serious online onslaught from bullies and trolls.

55. As part of her evidence, the 2nd Complainant adduced:-

- c) Screenshots of WhatsApp messages between her and the Respondent;
- d) Screenshots of the Facebook posts where her personal data was shared.

ii. THE RESPONDENT'S RESPONSE

56. The Respondent in her response to the Complaints dated 13th May 2025, averred as follows;

57. That she is the registered and/or legal owner of rental Apartment Number Block **** House **** situated in NHC Kileleshwa alongside Mandera Road in Nairobi County hereinafter referred to as the premises.

58. That the Complainants herein, Rebecca Atieno Odock and Brenda Ochieng are mother and daughter respectively. On or about 1st July 2024, Brenda Ochieng approached her with the intention of renting the premises on behalf of her mother.

59. That the 2nd Complainant, upon asserting that she would be responsible for rent payment, negotiated the terms with her after which she made a deposit payment of Kshs. 160,000 on 6th August, 2024. The agreement was that house rent was to be paid together with the two (2) months deposit. However, owing to the aforementioned negotiations, Brenda Ochieng paid one (1) month deposit, promising to pay the other outstanding balance in two (2) equal instalments. She also agreed to do the needed repairs in the premises. Ultimately, her mother, the 1st Complainant moved into the premises as a tenant.

60. That upon settling in the premises, and being in quiet possession for over a month, the 2nd Complainant had neither complied with the agreement on settlement of the outstanding deposit nor cleared the house rent payment for the month. She had equally ignored/neglected to pay her utilities like water and electricity as stipulated

in the tenancy agreement. She alleged that her brother had been involved in an accident and asked for her indulgence. At this point, the 2nd Complainant had received both electricity and water bills which were forwarded to her. Nevertheless, she granted the 2nd Complainant more time to comply as agreed.

61. That on 15th October, 2024, she reached out to the 2nd Complainant again reminding her of the pending bills that kept accruing without settlement. The 2nd Complainant informed her that she was still taking care of her brother who was still recovering and that she would clear the same in the course of that week ending on the 19th October, 2024. Expectedly, she didn't comply as promised.
62. That on 12th November, 2024 she again reached out to the 2nd Complainant, forwarding the electricity bills she had been issued with and asking her to settle the same alongside the outstanding house rent/deposit and other utility bills. She did not comply.
63. That on 19th November, 2024, she attempted to call the 2nd Complainant in vain. The following day on 20th November 2024, she returned with yet another excuse that her daughter attempted suicide owing to cyberbullying and that she had been rushed to the Hospital for treatment. She promised to make the payments the following week. Again, she did not comply. She attempted to call the 2nd Complainant on November 27th and 28th but her calls went unanswered.
64. That on 5th December 2024, the 2nd Complainant acknowledged that she owed her a total of Kshs. 320,000 and requested to be allowed to settle the same by way of monthly installments of Kshs: 130,000 until payment in full. The 1st installment was to be paid immediately but no payment was made. She kept calling the 2nd Complainant for fifteen days (15) but no response was received.
65. That at this point, she received a complaint from the Estate Management regarding the 1st Complainant whose children were harassing the estate managers. The said complaint was forwarded to the 2nd Complainant. On 20th December, 2024, the 2nd Complainant responded by telling her that she was not the tenant and that she should not contact her again, instead contact the 1st Complainant who is the tenant.

66. That she contacted the 1st Complainant who begun giving false promises of settling the arrears on a weekly basis. She did not comply. On 26th December, 2024, she issued a Notice to vacate the premises to the 1st Complainant, and copied to the 2nd Complainant. On receiving the notice, the 2nd Complainant blocked her contacts thus cutting the communications fully.
67. That upon the lapse of the Notice period, and the 1st Complainant was yet to vacate the premises, she was constrained to disconnect electricity and water supply thereon. In reaction to this move, the 1st Complainant reached out to her with a restructured agreement promising to make monthly installments of Kshs. 130,000 till payment in full.
68. That the first installment was to be made on 10th January, 2025. Again, she did not comply managing to only pay a mere Kshs.80,000 by the end of 18th January, 2025. From there, the false promises continued and on 15th February, she paid Kshs. 70,000.
69. That she once again issued a notice to vacate by 21st March, 2025. The 1st Complainant refused to vacate.
70. That owing to the continued lies, false promises and frustrations perpetuated by the complainants she put up a post on Facebook.
71. That the post was purely meant to persuade them to settle the outstanding rent and bills which had accrued over time. She did warn them about this by asking them to clear the balance due and owing. They refused to comply.
72. That the Facebook pages where the story was published are public pages which have clear policy guidelines on the membership and or the activities thereon.
73. That the story as posted captured the actual set of facts and was not derogatory and/or malicious in any manner. The story was neither controverted by the complainants nor flagged by Facebook to be false at the material time.
74. That the complainants herein are active Facebook users having and operating active Facebook accounts. Their activities on the said platform are public and all their activities and or posts can be seen by all other users on the platform.

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75. That the photos used in the suit posts were obtained from their pages. The same were/ are on the public domain and can be accessed by all and sundry. Data can only be deemed personal if they are not posted on a public forum like, Facebook.
76. That she invites the Office to note that the phone numbers in question are on public domain. The 2nd Complainant has posted the same in her public social media business pages; for instance, in <https://www.facebook.com/finelivinginteriorsandconstruction> where the number can be clearly seen.
77. That the complainants have not provided any proof of trolls and or harassment as alleged. Even in if there is any, which is denied, the complainants have not demonstrated that the alleged trolls resulted from the subject Facebook post.
78. That the 2nd Complainant has made wild allegations that her business was exposed by her through the post. The Office will further note that the alleged business page is a public page which can be accessed by all the users on the platform. The 2nd Complainant created the said public page for public access and or engagement. Therefore, she cannot purport that there was breach of privacy and that her public page was allegedly 'exposed' by her when the same was already in the public domain.
79. That the Complainants owe her Kshs. 216,000. She demanded a payment of Kshs. 200,000 for rent arrears and immediate vacation of her premises. The claim on extortion is totally unfounded. The money claimed by her are outstanding balances which are due and owing. To date, the Complainants have refused and/or ignored to settle the same despite several demands and/or reminders. At the opportune time, she would explore the available legal options to recover the amount and interests thereof from the Complainants.
80. That the Complainants are seeking for an award of Kshs 2,000,000. They have not demonstrated how they have suffered this kind of loss. They are in a fishing expedition of trying to profit themselves using this complaint. The Office will note from the evidence attached by her that the Complainants are not victims as they are trying to portray themselves. They are miscreants who are in the business of reaping where they didn't sow. They are living off other peoples' sweat and tears.

Records will show that they still have pending arrears due and owing to her. Instead of clearing the debt, they are now engaging in side shows and are inviting the Office to rubberstamp their illegalities.

81. That the Complainants herein have subjected her to untold mental and psychological anguish through perpetual lies and unfulfilled promises. The premises which the Complainants occupied is a rental property developed using loans from banks and other financial institutions. She is still repaying the same and legitimately expects to honour the same using the rental income from the subject premises. Owing to the Complainants' bad behavior, she has been exposed to adverse actions from the banks seeking their dues. She equally has other needs for instance a family to raise which require finances. It is evident that the Complainants do not consider this; they are blinded by the pursuit of their selfish agenda.
82. That that the Office is anchored on the principles of natural Justice and Equity. The Complainants herein are not coming with clean hands. The facts leading to the instant matter have been highlighted herein and it is clear that her rights as a property owner have been violated by the Complainants. They have perfected the art of lying and giving false promises. She holds that this complaint was made in furtherance of the Complainants' scheme. She demands from the complainant the outstanding arrears of Kshs. 216,000 plus interests from 1 August, 2024 till payment in full.
83. That she was served with a demand letter directing her to pull down the post from the platform, a directive she promptly complied with.

H. ISSUES FOR DETERMINATION

84. In light of the above, the following issues fall for determination by this Office:
- i. Whether there was an infringement of the Complainants' rights under the Act and its attendant regulations;
 - ii. Whether the Respondent fulfilled their obligations under the Act; and
 - iii. Whether the Complainants are entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS AN INFRINGEMENT OF THE COMPLAINANTS' RIGHTS UNDER THE ACT AND ITS ATTENDANT REGULATIONS.

85. Section 26 (a) of the Act provides data subject with the right to be informed of the use of their personal data. Section 26 (a) clearly states that, "*A data subject has the right to be informed of the use to which their personal data will be put.*".

86. The Respondent only had the Complainants' consent to process their personal data as far as the tenancy agreement was concerned. The act of posting both Complainants' personal data on the Facebook pages infringed on their right to be informed of the use to which their personal data would be put, and constituted a direct contravention of the Act.

II. WHETHER THE RESPONDENT FULFILLED THEIR OBLIGATIONS UNDER THE ACT.

87. Section 30 of the Act provides data subject with the right object processing of personal data. Section 30 clearly 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.*".

88. From the account of both the Complainants and the Respondent herein, it is apparent that the Complainants did not consent to having their personal data processed on Facebook by the Respondent, a direct infringement of the Act.

89. Section 32 clearly states that, "*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.*".

90. By the facts of this Complaint, it is clear that the Complainants only consented to the processing of their personal data as far as the tenancy agreement was in place. Posting the Complainant's data on Facebook went beyond the consented scope of processing and therefore, constituted a direct infringement of the Act and attendant regulations.

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WHETHER THE COMPLAINANTS ARE ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.

91. 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.
92. The Complainants 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.
93. 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.
94. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainants' rights to be informed of the intended use of their personal data and to consent to the processing of their personal data under the Act were infringed upon by the Respondent. However, the Office is cognizant of the Respondent's rental and utility arrears accrued by the Complainant that resulted into the processes that culminated into this Complaint.
95. In this context, the Office declines to award compensation in the circumstances.
96. With regards to issuance of an Enforcement Notice, the Office notes that the Respondent took down the posts in question after issuance of a demand letter by the Complainants. The Office therefore declines to issue an Enforcement Notice.

G. FINAL DETERMINATION

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

- i. The Complaint is dismissed.
- ii. 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 June 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

