



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 0278 OF 2025**

**JIMMY OWITI .....COMPLAINANT**

**-VERSUS-**

**NATAL TECH 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 alleging that the Respondent unlawfully transmitted multiple emails to his employer, the National Environment Management Authority (NEMA) revealing his financial obligations without his explicit and informed 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 through his Advocates, Otiang'a Owiti & Company Advocates on 21<sup>st</sup> 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 12<sup>th</sup> March, 2025 and referenced ODPC/CIE/CON/2/1 (130). 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 could provide further details as regards to this complaint;
  - c. How the Respondent obtained the email addresses of the listed individuals as shown in the email thread;
  - d. The lawful basis relied upon by the Respondent to contact the third-parties as indicated in the email thread;

- e. Any relevant materials or evidence in support of their response above;
- f. The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint does not take place again; and
- g. Any other relevant information the Respondent wishes the Office to consider.

8. On 3<sup>rd</sup> April 2025, the Respondent submitted to the Office a Response to the Notification of Complaint.

9. On 12<sup>th</sup> April 2025, the Complainant submitted a rejoinder to the response.

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. 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**

12. It is the Complainant's assertion that the Respondent, through its agents, unlawfully transmitted multiple emails to his employer, the National Environment Management Authority (NEMA), revealing his financial obligations without explicit and informed consent.

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

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

13. The Complainant avers he was subjected to aggressive and coercive debt collection tactics, including repeated WhatsApp messages and calls from the Respondent's representatives, who threatened to disclose the client's financial situation to his employer.

14. That the Respondent's representatives, operating under unverified aliases such as, "T\*\*\*\* L\*\*" and "J\*\*\*\* C\*\*\*\*" engaged in defamatory, fraudulent and harassing conduct, thereby obstructing accountability.

15. The Complainant further avers that the Respondent processed and misused his data in a manner inconsistent with the principle of lawful and fair data protection.

16. The Complainant stated that he had suffered severe reputational damage, emotional distress, and workplace embarrassment as a result of these violations.

17. The Complainant sought the following remedies from this Office:

- i) That the Office immediately launch a formal investigation into the Respondents for data privacy violations and unlawful debt collection practices;
- ii) That the Office impose severe penalties including financial fines;
- iii) That the Office issue an enforcement notice requiring the Respondent to implement corrective measures, including a strict review of their data handling and debt collection practices;
- iv) An order to the Respondent to issue a formal apology to the Complainant and provide legally binding assurances that such violations would not be repeated;
- v) That the Office refer the matter to the appropriate authorities for potential prosecution if deemed necessary.

18. The Complainant provided screenshots of the emails alleged to have originated from the Respondent, screenshots of WhatsApp messages from phone numbers; +254 7\*\*\*\*\*66 and +254 7\*\*\*\*\*06 demonstrating clear evidence of workplace exposure.

## **ii. THE RESPONDENTS' RESPONSE**

19. The Respondents submitted a response to the notification dated 3<sup>rd</sup> April 2025 in which they averred as follows;

20. That the Respondent strictly adheres to data minimization principles in compliance with data protection regulations and at no point during their user-onboarding or loan application process do they request or store borrowers' employer details, including company names or work email addresses. They aver that their system is designed only to collect the necessary information required for lending services.

21. That it wasn't possible for the institution to have accessed or transmitted a user's employer details further stating that this fundamental limitation in their data

collection process makes it unlikely that the alleged emails originated from their official channels.

22. That following a comprehensive internal assessment, the Respondent confirmed that none of its collection agents had sent the emails in question since their communication policies adhere to strict regulatory and ethical guidelines ensuring that all borrower interactions remain confidential and compliant with data protection laws.

23. That the wording and nature of the emails mentioned in the complaint were inconsistent with the official collection procedures further stating that their institution does not engage in unauthorized disclosure of borrower information, and that such claims do not reflect on their established communication standards.

24. That the Respondent was concerned that this may have been a case of misrepresentation by an external party. That given the competitive nature of the industry, it was not uncommon for malicious actors to impersonate financial institutions for various reasons, including creating reputational harm.

25. That the Respondent is fully committed to upholding data protection laws and ensuring consumer privacy, stating that they have implemented strict internal controls to prevent the unauthorized disclosure of personal data.

### **iii. THE COMPLAINANT'S REJOINDER**

26. The Complainant submitted a rejoinder dated 12<sup>th</sup> May 2025 in which he avers as follows;

27. Regarding the denial of employer data collection; the Complainant stated that this assertion by the Respondent is contradicted by direct evidence submitted to the Office, specifically unsolicited emails sent to his employer from addresses such as "[t\\*\\*\\*\\*2@gmail.com](mailto:t****2@gmail.com)" and [j\\*\\*\\*\\*83@gmail.com](mailto:j****83@gmail.com) disclosing loan details and demanding repayment. The Complainant further avers that WhatsApp messages received from the Respondent's representatives contain references to NEMA's HR Officers and senior officials, demonstrating that employer-related information was accessed and exploited for debt collection.

28. Regarding the disavowal of responsibility by their collection agents; the Complainant averred that this claim by the Respondent was unsupported by evidence because they did not; disclose a list of authorized collection agents or third-party processors; submit audit trails of communication logs to verify their claims; produce any data protection impact assessments (DPIAs) covering debt-recovery practices.
29. Regarding the claim of possible external impersonation, the Complainant avers that this claim lacked any technical, investigative or procedural support. The Complainant stated that this was because the Respondent; did not submit a report of impersonation to the Office or the Directorate of Criminal Investigations; did not provide email header metadata, SPF/DKIM records or server logs to substantiate the alleged spoofing; and failed to notify the Complainant of any breach.
30. Regarding the Respondent's general statement of Data Protection Compliance, it is the Complainant's view that this assertion by the Respondent lacks demonstrable compliance because the Respondent failed to provide; copies of their privacy policy, consent framework or DPIA; records of user notice including the basis and scope of data use and third-party disclosure; any denial of access to contact lists, SMS logs or employer identification, which are commonly accessed by mobile lending apps.
31. The Complainant further averred that as a public officer, he has suffered; unauthorized disclosure of his debt status to their employer; threats of job loss, reputational damage and public embarrassment; psychological distress, workplace anxiety and fear of surveillance.

#### **F. INVESTIGATIONS UNDERTAKEN**

32. The investigation process entailed a review of available documentation including: the complaint document / form as lodged by the Complainant and the supporting evidence; screenshots of email sent to both the Complainant and third parties; the Respondent's response to the notification letter; CR12 under the Business Registration Service belonging to the Respondent; a site visit.

33. After careful analysis of the adduced evidence on record and the law, the following was established:

- i. The Respondent through its letter stated that due to recent market challenges and underwhelming commercial performance, the Kifaru app has been removed from Google Play, and their team currently does not maintain a physical office. This is after a notice of site visit was issued to the Respondent via email.
- ii. The Respondent stated that it is in the process of relocating to a more cost-effective workspace. In light of this, a physical inspection was neither practical nor justified.
- iii. The Investigation Officers proceeded to visit the Respondent's premise according to the CR12 Search, in H\*\*\*\*\* Building (along Kenol Sagana Highway) with attempts to carry out the scheduled site visit and investigations, but the Respondent was nowhere to be traced.

34. From the facts, evidence, and analysis done, the Office concludes that the Respondent's lack of transparency in disclosing its physical office raises a lot of concerns and hindered the investigation process thereby obstructing the Data Commissioner under section 61 of the Act.

#### **G. ISSUES FOR DETERMINATION**

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 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**

28. Section 26 (a) provides data subject with the right to be informed of the use of their personal data.

29. Here we can see that the Respondent did not take any steps to inform the Complainant of the intention to contact his employer in order to seek consent with regards to processing, which contravenes the Act.

30. Section 26 (d) of the Act provides that a data subject has a right to deletion of false or misleading data about them. However, the Complainant did not adduce any evidence to show that he had exercised this right before a complaint was lodged. Therefore, the Office concludes that there was no violation of this right.

31. Based on the above, this Office concludes that the sending of emails to the Complainant's employer without his consent, constitutes a direct violation of the Complainant's right to be informed of the use to which their personal data will be put covered by Section 26 (a) of the Act.

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

42. 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.

43. 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.

44. 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.

45. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right to be informed of the use to which their personal data will be put as envisaged under section 26 (a) was infringed.

46. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Fifty Thousand (KES 50,000)** for the infringement of his rights under

the Act, considering that the Complainant had a loan obligation which he was also entitled to pay.

47. In addition to the Respondent contravening the provisions of the law as espoused above, the Respondent also contravened Section 61 of the Act. The Respondent's actions of refusing to abide by the notice of site visit obstructed the data commissioner in the exercise of her powers as enshrined under section 9 of the Act.

48. Section 61(c) of the Act provides that a person who, in relation to the exercise of a power conferred by section 9 of the Act refuses to allow the Data Commissioner to enter any premises or take any person with them in the exercise of their functions commits an offence.

49. As such the Office is guided accordingly, and the Office hereby recommends the prosecution of the Respondent's directors for obstructing the Data Commissioner and refusing to allow the Data Commissioner to enter into their premises to exercise the office's investigative powers as enshrined under section 9 of the Act.

#### **H. FINAL DETERMINATION**

50. 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 Fifty Thousand (KES 50,000)** as compensation.
- iii. A recommendation for prosecution is hereby made against the Respondent's directors for obstruction of the Data Commissioner, an offence under Section 61 of the Act.

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

DATED at NAIROBI this 21<sup>st</sup> day of May, 2025.



**IMMACULATE KASSAIT, MBS  
DATA COMMISSIONER**

