



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 0520 OF 2025**

**STEPHEN NGATIA MAINA .....COMPLAINANT**

**-VERSUS-**

**WHITEPATH COMPANY 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 on 4<sup>th</sup> April 2025. He avers that the Respondent used his personal data without his consent to list him as a guarantor for a loan he did not authorize.

**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 4<sup>th</sup> April 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 23<sup>rd</sup> May, 2025 and referenced ODPC/CIE/CON/2/1 (262). 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. Any relevant materials or evidence in support of their response above;
  - c. Details on how they obtained the Complainant's personal data;
  - d. The contractual agreement with the Complainant if any;
  - e. Proof of consent from the Complainant for the use of his personal data for debt collection or related purposes, if applicable;
  - f. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any; and

g. Any other relevant information the Respondent wishes the Office to consider.

8. On 31<sup>st</sup> May 2025, the Respondent submitted to the Office a Response to the Notification of Complaint.

9. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.

10. 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**

11. It is the Complainant's assertion that the Respondent had used his personal data without his consent, to list him as a guarantor for a loan that he did not authorize.

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

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

12. The Complainant avers that on 2<sup>nd</sup> April 2025, they received multiple phone calls from an unknown number demanding that he repay a loan allegedly linked to one R\*\*\*\* K\*\*\*\* G\*\*\*\*.

13. That he was harassed, insulted and called over 50 times, disrupting his peace and ability to conduct business.

14. That after confirming with Ms. R\*\*\*\* K\*\*\*\* G\*\*\*\* that he has not been listed as a guarantor, the Complainant asked the Respondent to stop further communication.

15. That even after, the Respondent continued to send threatening messages and make repeated calls even after receiving an email request to stop.

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

- i) A formal apology for the distress caused.
- ii) Acknowledgement of the inconvenience and interruption to his business, as the phone used was his main business line.

17. The Complainant provided call logs from the Respondent's caller as well as the alleged 3<sup>rd</sup> party who claimed to have listed him as a referee.

**ii. THE RESPONDENTS' RESPONSE**

18. The Respondents submitted a response to the notification dated 31<sup>st</sup> May 2025 in which they averred as follows;

19. That their agents had acted unprofessionally and violated the Company's code of conduct and as a result; the offending agents had been penalized and permanently removed from the debt recovery team.

20. That they only collect referee contacts voluntarily provided by loan applicants and denied accessing entire phonebooks, as alleged in the complaint.

21. That all communication with the Complainant had ceased, the loan recovery process against the related party was suspended, and both the Complainant and the loan applicant were engaged to resolve the matter amicably.

22. The Respondent provided screenshots of information allegedly provided by the loan applicant as well as the loan applicant information.

**F. ISSUES FOR DETERMINATION**

23. 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 Respondent 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**

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

29. Here, we can see that the Complainant was not aware that his data was being processed by the respondent until he started receiving the numerous phone calls informing him that he had been listed as a guarantor by a third party.

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30. Section 26 (c) read alongside regulation 8 (1) of the Data Protection (General) regulations, 2021 of the Act provides data subject with the right object processing of personal data. Section 26 (c) clearly states that, *"A data subject has the right to object to the processing of all or part of their personal data."* Regulation 8 (1) further specifies *"that a data Subject may request a data controller or processor not to process all or part of their personal data, for a specified purpose or in a specific manner."*
31. In this case, the Complainant exercised their right to object to the processing of their data by telling the Respondent's agents that were calling him with regards to the loan, that they should contact the loan applicant instead of himself since he knew nothing about the alleged loan by the Respondent.
32. The Respondent was obligated to honour the Complainant's request to cease processing their personal data. However, the Respondent disregarded this objection and continued to send messages and call the Complainant incessantly, which is a direct breach of the Complainant's rights under section 26 (c).
33. In view of the foregoing, the Complainant's rights with respect to right to be informed under Section 26(a) and the right to object under Section 26(c) were violated by the Respondent.

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

34. 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.
35. 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.
36. 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.

37. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's rights to be informed of the intended use of their personal data, object processing under Section 26 of the Act were infringed upon by the Respondent.

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

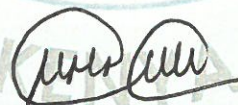
39. The Office takes cognizance of the fact that the Respondent ceased communication with the Complainant. Further, the Respondent acknowledged the misconduct of its agents and removed them from the debt recovery team, demonstrating corrective action. In this regard, an Enforcement Notice shall not issue.

#### **G. FINAL DETERMINATION**

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

**DATED** at **NAIROBI** this 2<sup>nd</sup> day of July 2025.



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