



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0372 OF 2025

MARTIN GIKONYO.....COMPLAINANT

-VERSUS-

KINGDOM BANK LTD.....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 a complaint against the Respondents alleging that the Respondent shared his personal data with the National Council of People with disability and the Consolidated Bank of Kenya's legal department without 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 '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 (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 12th 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, on 23rd April 2025, the office notified the Respondents of the complaint filed against them *vide* a letter dated ODPC/CIE/CON/2/1(239). The Office in the said complaint notification letter requested the Respondent to furnish the Office with –
 - a) A response to the allegation made against them by the Complainant and a contact person who can provide further details as regards this complaint;
 - b) Any relevant materials or evidence in support of their response;
 - c) The legal basis relied upon to reveal the complainant's disability status to third parties;
 - d) An elaborate representation of how data subjects can exercise their rights in relation to data protection;
 - e) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the complainant and to ensure that such occurrences mentioned in the complaint do not take place again; and
 - f) Any other information they wish 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 Respondents of the options of -
 - a. Reviewing the complaint and summarily resolving the same to the satisfaction of the Complainant, 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 Respondents responded to the notification letter on 13th May 2025. In addition to the response to the Complaint, the respondent requested that the complaint be resolved through mediation according to Section 9 (1) (c) of the Act, Regulation 15 of the Enforcement Regulations, and the Alternative Dispute Resolution (ADR) Guidelines published by this Office.
10. As the ADR process is party-driven, the Complainant was requested to consent to resolving the dispute through mediation or conciliation. The Complainant agreed to attempt to resolve the dispute through ADR.
11. Despite attempts to resolve the dispute through ADR, the complaint was not resolved and therefore, the dispute was referred back to this Office for determination as per Regulation 15 (8) of the Enforcement Regulations which provides that where the complaint is not determined through ADR, the Data Commissioner shall proceed to determine the complaint as provided for in the Act and the Regulations.
12. This determination is therefore a result of analysis of the complaint as received, the responses from the Respondent, and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

13. The Complainant alleged that the Respondent shared his personal data with the National Council of People with disability and the Consolidated Bank of Kenya's legal department without his consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

14. The Claimant has been working for the Respondent in various capacities since 2013.
15. It was the Complainant's case that a work-related dispute arose between him and the Respondent and in the process of addressing the dispute, several correspondences were exchanged through letters and emails.
16. That on 18th February 2025, the Respondent's Advocate wrote an email and letter to the National Council of people with disability seeking intervention through mediation without the Claimant's consent. To the Complainant, this correspondence disclosed the Claimant's disability status and employment dispute to third parties without the Claimant's express consent.
17. The Complainant further stated that on 6th March 2025, the Respondent's advocate also, in an email correspondence, copied the consolidated Bank of Kenya Legal department and unlawfully shared the Claimant's sensitive personal data without consent. The Complainant contended that the inclusion of consolidated bank in the correspondence, which went unnoticed initially, further exposed the Claimant's sensitive data to third parties without express consent.
18. To support its complaint, the Complaint adduced the e-mail correspondences sent to the council and copies to the copied the consolidated Bank of Kenya Legal department.

THE RESPONDENT'S RESPONSE

19. The Respondent stated that the Claimant has been its employee since 2013 to date, wherein he currently holds the position of senior audit officer.
20. The Respondent submitted that the Claimant raised an employment dispute with the Respondent on allegations of discrimination on account of his disability. The respondent stated that sometime between November 2023 and August 2024, the Claimant and the Respondent internally engaged in an employment-related dispute

nt

where the Claimant alleged inter alia discriminatory treatment in the workplace based on his disability status with respect to his career progression within the Respondent.

21. That in an attempt to resolve the dispute, engaged the Claimant internally and following his dissatisfaction, the Respondent sought to engage the National Council for Persons with Disabilities (hereinafter, "the Council") on their availability to mediate over the dispute.
22. That the Respondent's rationale in engaging the Council flowed from the fact that the Claimant is a registered member of the Council, and the Respondent denied the allegations of discrimination against the Claimant.
23. The Respondent further stated that through its counsel, it wrote e-mail enquiries to the Council, with the Claimant in copy, and the nature of the enquiries was strictly limited to the Council's capacity and ability to mediate the dispute with the Claimant as a registered member, and without sharing any sensitive personal information.
24. That in the spirit of transparency and good faith, the Respondent notified the Claimant of its attempt to engage the Council, and the Claimant duly participated vide their correspondence.
25. That while corresponding with the Council on their request to mediate, the Respondent's counsel inadvertently copied one of the enquiry emails to mediate to the Consolidated Bank of Kenya Limited, an act that was accidental and not attributable to the Respondent directly.
26. The Respondent further stated that the Claimant contributed to this inadvertent action by continuing to copy the Consolidated Bank of Kenya Limited, in their subsequent response and correspondences with the Council;
27. That upon this realization that the Claimant sought to lodge a complaint with the Office of the Data Protection Commissioner alleging that his personal data was breached by the Respondent, which action is denied.

28. The Respondent stated that its advocates engaged the council to understand whether it had the capacity to mediate over an employment dispute relating to its member, and therefore, no sensitive information pertaining to the Claimant was shared with the Council.
29. The Respondent stated that pursuant to Section 7 of the Persons with Disabilities Act, Cap. 133, the Council is mandated to protect and champion the employment welfare of its members, including the Claimant, which is why the Respondent engaged them with the view of ensuring that an amicable resolution is reached that would protect the employment relationship as opposed to soiling it through legal action
30. The Respondent stated that the Claimant vide their response on email dated 18th February 2025, acknowledged this avenue to seek the Council's intervention to mediate over the dispute, where he stated as follows: - "...Kindly also confirm whether NCPWD (the council) is accredited as mediators for purposes of our advice to the client."
31. That further the Claimant and his Counsel, vide their letter dated 19th February 2025, indicated that they had no objection to the Respondent seeking the Council's intervention to mediate over the dispute in the following terms: - "...our client has no objection to your client seeking independent legal guidance from the Council on the rights of persons with disabilities in the employment sector, should they deem it necessary. However, before any consideration of mediation, your client must first provide a substantive response to the issues raised in our client's demand letters..."
32. The Respondent stated that, unfortunately, this attempt to amicably mediate and settle the dispute through the Council, being an independent and impartial mediator, was scuttled by the Claimant, which effectively closed any further discussions
33. The Respondent further stated that at all material times, the Claimant was in copy of the Respondent's correspondence with the Council with a view to notifying the Claimant of the Respondent's intent to enable the Claimant to consent to the

process. As soon as the Claimant refused to participate in the process, there was no further correspondence between the Respondent and the Council on the request to mediate over the dispute between the Claimant and Respondent.

34. The Respondent further stated that After the failure of the mediation process, the Claimant proceeded to file an Employment Petition dated 9th April 2025 against the Respondent vide Nairobi ELRC No. E295 of 2025 where it sought general damages for alleged discriminatory action by the Respondent. The petition was later withdrawn.

35. To support its response, the Respondent adduced:-

- a) the Respondent's internal letter correspondences between the Claimant and the Respondent dated between November 2023 and August 2024.
- b) The Claimant's demand Letter dated 18th December 2024.
- c) The Email correspondences between the Respondent's and Claimant's legal representatives dated between 20th January 2025 and 5th February 2025.
- d) The Claimant's further demand letter dated 4th February 2025.
- e) The Respondent's advocates letter to the council dated 18th February 2025.
- f) The email correspondences between the Claimant, Respondent and the council dated between 18th February 2025 and 11th March 2025.
- g) The Claimant's Advocate's letter to the Respondent dated 19th February 2025.
- h) The Claimant's ELRC petition dated 9th April 2025; and
- i) The Notice of withdrawal dated 17th April 2025.

G. ISSUES FOR DETERMINATION

36. It is an undisputed fact that:-

- a) At all material times in the context of this complaint, the Complainant and Respondent had an employer-employee relationship; and
- b) The Complainant was a registered member of the National Council for Persons with Disabilities.

c) The Respondent reached out to the National Council of People with disability seeking the council to mediate the employment dispute between the parties herein.

37. The following issues therefore fall for determination by this Office:

- i. Whether there was a violation of the Act and its attendant regulations; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS A VIOLATION OF THE ACT AND ITS ATTENDANT REGULATIONS.

38. Before delving further, we would like to note that the complaint at hand is intertwined with an employment grievance and as such we would like to delink ourselves from any employment grievance fronted against the Respondent. our scope will be limited strictly to our mandate as stated above in paragraphs 2 to 5.

39. It was the Complainant's position that the Respondent, through an email correspondence to the Council, seeking to resolve the employment dispute between the parties herein through mediation, shared the Complainant's personal data with the National Council of People with disability and the Consolidated Bank of Kenya's legal department without his consent.

40. It was the Respondent's position that while corresponding with the Council on their request to mediate, the Respondent's counsel inadvertently copied one of the enquiry emails to mediate to the Consolidated Bank of Kenya Limited, an act that was accidental and not attributable to the Respondent directly. The Respondent further stated that the Claimant contributed to this inadvertent action by continuing to copy the Consolidated Bank of Kenya Limited, in their subsequent response and correspondence with the Council.

41. Section 2 of the Act defines personal data as any information relating to identified or identifiable natural person. The same section goes further and defines an identifiable natural person as a person who can be identified directly or indirectly, by reference to an identifier such as a name, an identification number, location

data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic. Cultural or social or social identity.

42. We have had a chance to look at the contents of the impugned email correspondences. From the correspondences between the parties, it is evident that the correspondences related to a request for mediation to resolve the employment dispute between the parties through mediation by the Council. From the correspondences, the parties were inquiring whether the council can resolve the employment dispute between the parties through mediation as required by law, since the complainant is its member. All parties were involved in the correspondence, and in fact, the Complainant's advocates on record inquired on the council's capacity to handle the dispute through mediation.

43. Further, as to the contents of the correspondences adduced, it is evident that no personal identifier was shared/ disclosed in the correspondences between the parties. The Complainant's NCPWD number was never disclosed in the correspondence. The NCPWD number is a distinct number that can be used to identify a person with disabilities.

44. This Office therefore finds that as far as issue no (I) is concerned, the email correspondences did not have any personal data that could be used to strictly identify the Complainant. As such, there was no violation of the Act and its attendant regulations.

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

45. According to Regulation 14 (2) of the Enforcement Regulations, a determination shall state the remedies entitled to the parties. Further, the remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.

46. Having established that there was no violation of the Act and its attendant regulations. it therefore follows that the Complainant is not entitled to any remedy under the Act.

E. FINAL DETERMINATION

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

- i. The Complaint lacks merit, and it is hereby dismissed.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days,

DATED at **NAIROBI** this 9th day of June 2025.



Immaculate Kassait

IMMACULATE KASSAIT, MBS
DATA COMMISSIONER