



**OFFICE OF THE DATA PROTECTION COMMISSIONER  
ODPC COMPLAINT NO. 1479 OF 2025**

**KENNEDY WAMBUGU.....COMPLAINANT  
-VERSUS-  
WHITEPATH COMPANY LIMITED.....RESPONDENT**

**DETERMINATION**

*(Pursuant to Sections 8(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 alleges that the Respondent, without obtaining his consent or having any lawful basis, unlawfully collected and processed his telephone number for purposes of a non-existent loan recovery.

**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 2<sup>nd</sup> October 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was the aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 5<sup>th</sup> November, 2025 referenced **ODPC/CIE/CON/2/1 (844)**. In the notification of the complaint, the Respondent was informed that if the Complainant's allegations were true, they would be in violation of various sections of the Act. Additionally, 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 can provide further details as regards the complaint;
  - c) Any relevant materials or evidence in support of their response above;
  - d) Their contractual obligation with the Complainant, if any;
  - e) Details on how they obtained the Complainant's personal data;
  - f) A detailed procedure on how data subjects can exercise their data protection rights;
  - g) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;

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- h) The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint do not take place again, if any;
  - i) Any other relevant information you wish the Office to consider.
8. This determination is therefore pursuant to the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021.

#### **D. NATURE OF THE COMPLAINT**

9. The Complainant contends that the Respondent, without obtaining his consent and in the absence of any other lawful basis under the Act, unlawfully collected and processed his telephone number for purposes of pursuing recovery of an alleged loan to which he is neither a party nor otherwise connected.

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

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

10. The Complainant stated that he received communications from individuals purporting to be representatives of the Respondent alleging that he owed money borrowed through the loan applications Sunlit Cash and SmartPesa.
11. The Complainant denied ever borrowing from these applications and asserted that no proof of the alleged loans had been provided. The Complainant further indicated that the representatives escalated the matter by emailing the Complainant's employer and accusing the Complainant of fraud, and that contact was made through the telephone number 07\*\*\*\*\*53.
12. Further, the Complainant avers that upon seeking clarification and particulars relating to the purported loan, the Respondent failed, neglected, and/or refused to furnish him with the requested information, contrary to the Respondent's obligations of transparency and fair processing.
13. In addition, the Complainant alleges that the Respondent unlawfully contacted his employer and, without justification, disclosed and misrepresented his personal data by associating him with allegations of fraud, thereby exposing him to reputational harm and constituting an unlawful disclosure of personal data to a third party.

14. As part of his evidence, the Complainant furnished the Office with screenshots of the multiple messages received from the Respondent's agents and with time stamps.

**ii. THE RESPONDENT'S RESPONSE**

15. The Respondent failed, refused and/or neglected to respond to the notification of complaint.

**F. ISSUES FOR DETERMINATION**

16. In light of the above, the complaint and evidence adduced, the following issues fall for determination by this Office:

- i. Whether the Respondent had a lawful basis for collecting and processing the Complainant's personal data in accordance with the Act and attendant Regulations.
- ii. Whether there was a violation of the right to be informed.
- iii. Whether the Complainant is entitled to any remedies under the Act and attendant Regulations.

**I. WHETHER THE RESPONDENT HAD A LAWFUL BASIS FOR COLLECTING AND PROCESSING THE COMPLAINANT'S PERSONAL DATA IN ACCORDANCE WITH THE ACT AND ATTENDANT REGULATIONS.**

17. Section 25 of the Act, principles of data protection provides that every data controller or data processor shall ensure that personal data is

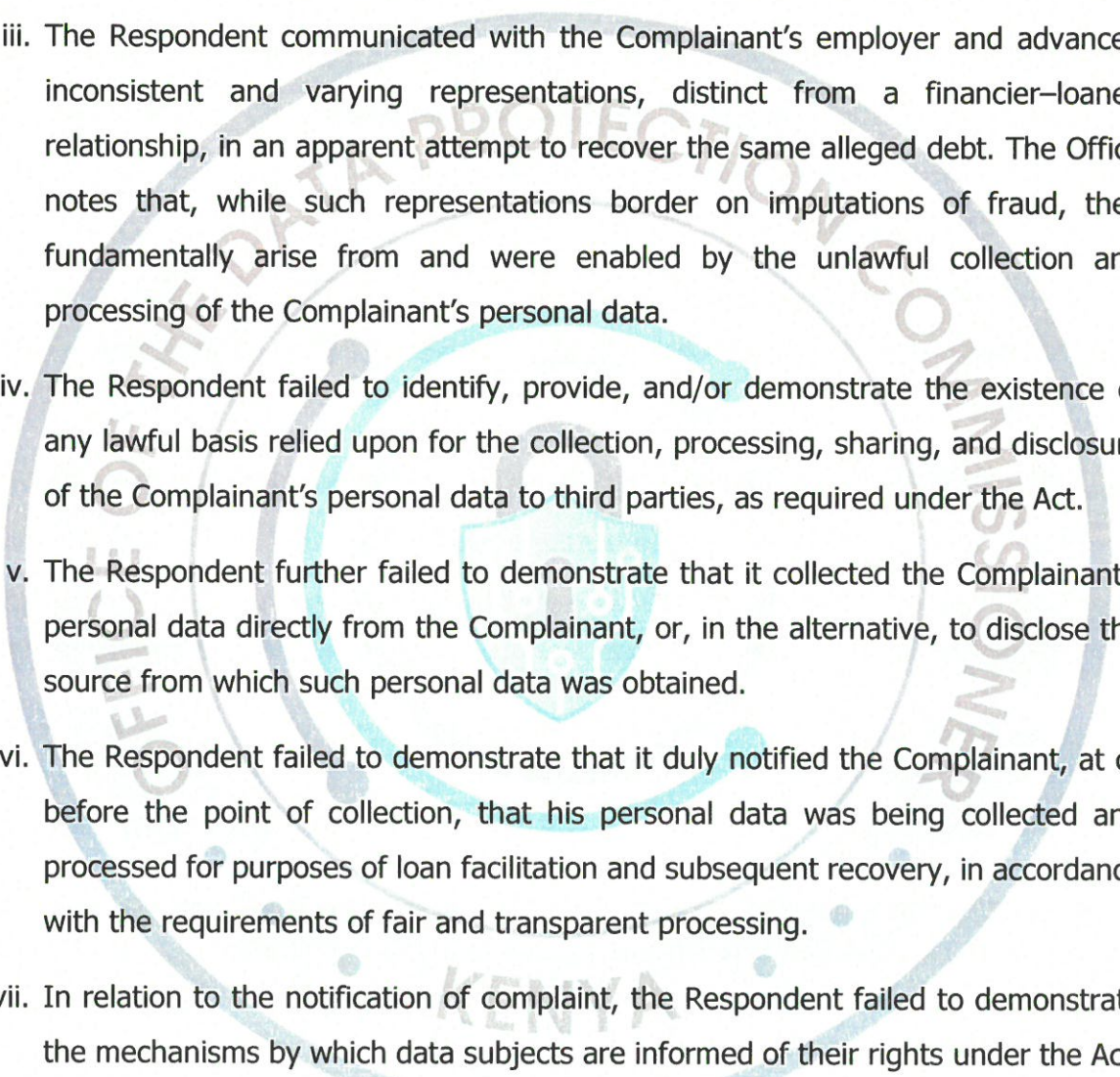
- (a) processed in accordance with the right to privacy of the data subject;*
- (b) processed lawfully, fairly and in a transparent manner in relation to any data subject;*
- (c) collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes;*
- (d) adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;*
- (e) collected only where a valid explanation is provided whenever information relating to family or private affairs is required;*
- (f) accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay;*

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*(g) kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and*

*(h) not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject.*

18. Section 28 of the Act additionally provides that a data controller or data processor shall collect personal data directly from the data subject unless the data controller or processor can demonstrate that indirect collection is necessary under exemptions listed in section 28(2) of the Act. Section 28(3) mandates that a data controller or data processor shall collect, store or use personal data for a purpose which is lawful, specific and explicitly defined.
19. Section 30 of the Act provides the permitted lawful bases for processing of personal data. This section further provides that any further processing of personal data shall be in accordance with the purpose of collection.
20. The Complainant avers that the Respondent, without obtaining his consent and in the absence of any lawful basis contemplated under Section 30(1) of the Data Protection Act, 2019, unlawfully collected and processed his personal data for purposes of loan recovery in respect of a purported loan to which the Complainant is neither a borrower, beneficiary, guarantor, nor otherwise connected, and which the Respondent nevertheless sought to unlawfully recover from him.
21. The Complainant further contends that the Respondent acted in bad faith by communicating with his employer and falsely representing that the sums allegedly owed arose from a business transaction which the Complainant had failed to honor, and which communication improperly imputed elements of fraud to the Complainant, thereby occasioning reputational harm and constituting an unlawful disclosure and misrepresentation of his personal data.
22. Analysis of the evidence on record demonstrates that -
- i. The Respondent did in fact contact the Complainant on several occasions in an attempt to recover an alleged defaulted loan facility.

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- ii. The Respondent failed, refused, and/or neglected to furnish the Complainant with any documentary or other credible evidence demonstrating that the Complainant was the borrower, account holder, beneficiary, guarantor, or otherwise legally connected to the alleged loan facility, or to provide a lawful explanation for pursuing recovery from him.
  - iii. The Respondent communicated with the Complainant's employer and advanced inconsistent and varying representations, distinct from a financier-loanee relationship, in an apparent attempt to recover the same alleged debt. The Office notes that, while such representations border on imputations of fraud, they fundamentally arise from and were enabled by the unlawful collection and processing of the Complainant's personal data.
  - iv. The Respondent failed to identify, provide, and/or demonstrate the existence of any lawful basis relied upon for the collection, processing, sharing, and disclosure of the Complainant's personal data to third parties, as required under the Act.
  - v. The Respondent further failed to demonstrate that it collected the Complainant's personal data directly from the Complainant, or, in the alternative, to disclose the source from which such personal data was obtained.
  - vi. The Respondent failed to demonstrate that it duly notified the Complainant, at or before the point of collection, that his personal data was being collected and processed for purposes of loan facilitation and subsequent recovery, in accordance with the requirements of fair and transparent processing.
  - vii. In relation to the notification of complaint, the Respondent failed to demonstrate the mechanisms by which data subjects are informed of their rights under the Act, and the procedures through which such rights may be exercised.

23. In view of the foregoing, the Office therefore finds that the Respondent failed to demonstrate that it had a lawful basis for collecting and processing and sharing and disclosing the Complainant's personal data with third parties in accordance with the act and attendant regulations.

## **II. WHETHER THERE WAS A VIOLATION OF THE RIGHT TO BE INFORMED.**

24. Section 29 of the Act imposes a mandatory obligation upon a data controller or data processor to inform a data subject, prior to the collection of personal data and in so far as practicable, of the matters enumerated therein, including the fact and purpose of collection, the lawful basis, the intended recipients of the data, and the rights available to the data subject under Section 26 of the Act.
25. The Respondent failed to demonstrate, either by documentary evidence or otherwise, the manner in which the Complainant's personal data was collected, the lawful basis relied upon for such collection and processing, or that the Complainant was informed of the processing in compliance with the requirements of Section 29 of the Act.
26. Section 26(a) of the Act provides a data subject the right to be informed of the use to which their personal data is to be put.
27. The record further demonstrates that the Complainant made several attempts to seek clarification from the Respondent regarding the source, purpose, and justification for the collection and continued processing of his personal data. Despite these inquiries, the Respondent failed to provide the requisite information, thereby exacerbating its non-compliance with the statutory duty to inform.
28. In this context, this Office finds that the Respondent violated the Complainant's right to be informed as per Section 26(a) of the Act.

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

29. According 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.
30. Having considered the merits of the complaint, the evidence adduced, and having found that the Respondent failed to demonstrate the lawful basis relied upon for the collection, processing, sharing and disclosed the Complainant's personal data to third parties without a lawful basis, it therefore, follows that there has been a violation of the Act by the Respondent.

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31. Section 65 (1) of the Act provides for compensation to a data subject and states 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. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.
32. Regulation 14 (3) (e) of the Enforcement Regulations further provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
33. Having found that the Respondent unlawfully collected, processed and disclosed the Complainant's personal data and violated his right to be informed, the Respondent is hereby directed to compensate the Complainant in the sum of **Kenya Shillings Three Hundred and Fifty Thousand (Kshs. 350,000/=)**. In arriving at this award, this Office has taken into account the nature and extent of the violation, the harm occasioned to the Complainant, and the need to uphold the accountability under the Act.

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

34. In the ultimate, the Data Commissioner makes the following final determination;
- i. The Respondent is hereby found liable for unlawful processing of the Complainant's personal data.
  - ii. The Respondent to pay the Complainant a sum of **KES 350,000/= (Kenya Shillings Three Hundred and Fifty Thousand Shillings Only)** 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 January 2026



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