



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1500 OF 2025

ARTHUR V.O OPINYA.....1ST COMPLAINANT
JOHN MARK WANDOLO.....2ND COMPLAINANT
MAURICE BUKELEMBE MISIKO.....3RD COMPLAINANT

-VERSUS-

**BRAINSTORM INSURANCE
BROKERS 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)

1. The Complainants allege that the Respondent unlawfully processed their personal data by falsely presenting itself as them through the unauthorised use of their names, professional titles, and professional accolades on its website and in a licence application, notwithstanding that the Complainants are professionals working with Nile Capital Insurance Brokers and have no association with the Respondent.

A. 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.

B. BACKGROUND OF THE COMPLAINT

6. This Office received a complaint from the Complainants on 5th 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 19th November, 2025 referenced ODPC/CIE/CON/2/1(889). In the notification of the complaint, the Respondent was informed that if the Complainants' 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 you by the Complainants;
 - b) A contact person who could provide further details as regards to this complaint;
 - c) Any relevant materials or evidence in support of the statement of response;
 - d) The lawful basis relied upon to process the Complainants' personal data;

- e) Evidence as to whether the Complainants consented to the use of the Complainants' data on their website;
- 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 occurrence mentioned in the complaint do not take place again, if any;
- h) Any other information you wish the Office to consider.

8. The Respondent furnished the Office with its statement of response *vide* a letter dated 24th November, 2025.

C. NATURE OF THE COMPLAINT

9. It is the Complainants' assertions that the Respondent unlawfully processed their personal data by falsely presenting itself as them through the unauthorised use of their names, professional titles, and professional accolades on its website and in a licence application, notwithstanding that the Complainants are professionals working with Nile Capital Insurance Brokers and have no association with the Respondent.

D. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainants' claimed that the Respondent impersonated their names, titles and professional accolades on their website and for purposes of obtaining a license.

11. The Complainant alleges that the Respondent used their personal data without their consent and with the intent to deceive clients and regulators.

ii. THE RESPONDENT'S RESPONSE

12. The Respondent pleads it did not have any lawful basis to process the Complainants' personal data.

13. The Respondent avers that the publication of the Complainants' information on their website was due to an unintentional error by their web developer who incorrectly

uploaded the names and professional details of the Complainants onto their website during a routine update.

14. The Respondent states that upon becoming aware of the issue, they took corrective action and removed all erroneous information from their website.

15. The Respondent further states that they have also taken further steps to ensure that such an error does not reoccur through the implementation of stricter content- review processes such as additional internal review procedures for all website content updates, and implementing an approval protocol for all website updates.

E. ISSUES FOR DETERMINATION

16. This Office wishes to clarify that at all material times, the Respondent acted as data controller, as defined in Section 2 of the Act, in respect of the Complainant's personal data, having determined the purpose and means of processing.

17. In light of the above, the complaint, the Respondent's responses and evidence adduced together with the investigations conducted, the following issues fall for determination by this Office:

- i. Whether there was a violation of the Complainant's rights under the Act;
- ii. Whether the Respondent fulfilled its obligations under the Act; and
- iii. Whether the Complainant is entitled to any remedies under the Act.

I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

18. Section 26(a) of the Act provides every data subject the right to be informed of how their personal data will be used.

19. In this case, the Respondent used the Complainants' personal data for public and regulatory purposes without informing them. The Complainants were not informed that their names, titles, and professional credentials would be published on a website or used in a licence application.

20. As the Complainants were not informed, they were denied the opportunity to understand, approve, or object to the use of their personal data. The use of their

information created the false impression that they were associated with the Respondent.

21. In light of the above, the Office finds that the Respondent failed to inform the Complainants of the use to which their personal data was to be put, namely the publication of their names, professional titles, and professional accolades on a website and in support of a licence application. This conduct amounts to a breach of Section 26(a) of the Act, violating the Complainants their right to be informed.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

22. In addressing this issue, the Office will address the following questions –

- a. Did the Respondent establish a lawful basis for processing the Complainants' personal data?
- b. Did the Respondent fulfil its duty to notify?
- c. Did the Respondent's processing of the Complainant's personal data meet the threshold for indirect collection of personal data as required and the Act?

Did the Respondent establish a lawful basis for processing the Complainant's personal data?

23. Section 25 of the Act outlines the principles which should be adhered to by data processors and controllers when handling personal data. Section 25(a) requires every data processor or controller to process all personal data in accordance with the right to privacy of the data subject. Further, Section 25 (b) requires every data controller or data processor to ensure that personal data is processed lawfully, fairly, and in a transparent manner in relation to the data subject. These obligations are continuous and apply throughout the lifecycle of data processing.

24. In this complaint, the Respondent used the Complainants' names, professional titles, and professional accolades without their consent, presenting them as associated with the Respondent on a website and in a licence application. This processing was neither lawful nor fair, because it misrepresented the Complainants, violated their privacy, and

denied them the ability to approve, object, or understand how their personal data was being used. It was non-transparent, as the Complainants were not informed of the processing, its purpose, or its consequences.

25. Further Section 30 of the Act 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. The Respondents processed the Complainant's personal data without obtaining consent from the Complainant. The Respondent failed to obtain valid consent as required under Section 32 of the Act, rendering the processing of the Complainant's data illegal.

Did the Respondent fulfil its duty to notify?

26. Section 29 of the Act provides an obligation to data controllers or data processors of the duty to notify the data subject. Notably, the data subject has to be informed of, *inter alia*;

- i. rights specified under Section 26;
- ii. the fact that personal data was being collected;
- iii. the purpose of collection of their personal data;
- iv. the third parties whose personal data has been or will be transferred to, including details of the safeguards adopted; and
- v. a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data.

27. The Respondent failed to inform the Complainants that their personal data would be used for website publication and a licence application. This failure constitutes a breach of Section 29 on the duty to inform of the use of personal data.

28. In addition to Section 41 of the Act imposes a proactive duty upon data controllers and processors to implement technical and organizational measures which are designed to implement the data protection principles in an effective manner; and to integrate necessary safeguards for that purpose into the processing.

29. Although the Respondent acknowledged that its web developer mistakenly uploaded a draft containing the Complainants' names, professional titles, and accolades before it had been finalised, this does not absolve it of responsibility. The Respondent did not implement safeguards to limit processing to necessary purposes, control access, or prevent unauthorised use, and failed to identify and mitigate foreseeable risks associated with handling personal data. As a result, the Complainants' personal information was misrepresented on the website and in a licence application, exposing them to potential reputational harm. This demonstrates a clear failure to uphold the duties under Section 41, including integrating safeguards effectively, ensuring responsible processing, and maintaining protections against foreseeable risks.

30. In view of the foregoing, the Office therefore finds that the Respondent did not protect the Complainants' right to privacy and unlawfully processed the personal data violating Sections 25(a), (b) as well as Section 30 of the Act. Furthermore, the inadvertent publication of the Complainants' personal data on the Respondent's website evidences the absence of a robust and effective systems thereby failing to meet the technical and organizational measures requires under Section 41 of the Act.

Did the Respondent's processing of the Complainant's personal data meet the threshold for indirect collection of personal data as required and the Act?

31. Section 28 (1) of the Act mandates a data controller to collect personal data directly from the data subjects. However, Section 28 (2) sets out the scenarios where personal data may be collected indirectly, including –

(a) the data is contained in a public record;

(b) the data subject has deliberately made the data public;

(c) the data subject has consented to the collection from another source;

(d) the data subject has an incapacity, the guardian appointed has consented to the collection from another source;

(e) the collection from another source would not prejudice the interests of the data subject;

(f) collection of data from another source is necessary—

(i) for the prevention, detection, investigation, prosecution and punishment of crime;

(ii) for the enforcement of a law which imposes a pecuniary penalty; or

(iii) for the protection of the interests of the data subject or another person.

32. By dint of Section 28(3) of the Act a data controller or data processor shall only collect, store or use personal data for a purpose which is lawful, specific and explicitly defined.

33. The Respondent was enjoined to demonstrate whether the indirect collection of the Complainants' personal data fell within the parameters set out in Section 28(2) above. Moreover, the Respondent was required to demonstrate that such collection was lawful, specific and explicitly defined as required by Section 28(3) of the Act. They did not.

34. It is therefore the finding of this Office that the Respondent did not establish a lawful, specific and explicitly defined purpose for the indirect collection of the Complainants' personal data.

35. In totality, it is the finding of this Office that the Respondent failed to fulfill its obligations under the Act.

III. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT.

36. 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.

37. With regards to the award of compensation, Section 65 of the Act provides for compensation to data subjects and states, *"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."*

38. Section 65(4) of the Act states that, *"damage includes financial loss and damage not involving financial loss, including distress."*

39. Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

40. In considering whether to issue compensation, this Office takes into consideration the fact that the Respondents violated the Complainants' right to be informed and the unlawful processing of their personal data. The Office further takes into account the remedial measures taken by the Respondent.

41. In this context, the Respondent is hereby ordered to pay the Complainants **Kenya Shillings One Million and Twelve Thousand, Five Hundred (KES 1,012,500)** as compensation as follows:

- i. Arthur V.O Opinya- **Three Hundred and Thirty-Seven Thousand, Five Hundred (337,500)**
- ii. John Mark Wandolo- **Three Hundred and Thirty-Seven Thousand, Five Hundred (337,500)**
- iii. Maurice Bukelembe Misiko- **Three Hundred and Thirty-Seven Thousand, Five Hundred (337,500)**

F. FINAL DETERMINATION

42. In consideration of all the facts of the complaints, the evidence tendered and the investigations conducted, the Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to pay the Complainants **Kenya Shillings One Million and Twelve Thousand, Five Hundred (KES 1,012,500)** as compensation as follows:
 - a. Arthur V.O Opinya (1st Complainant) - **Three Hundred and Thirty-Seven Thousand, Five Hundred (337,500)**
 - b. John Mark Wandolo (2nd Complainant) - **Three Hundred and Thirty-Seven Thousand, Five Hundred (337,500)**
 - c. Maurice Bukelembe Misiko (3rd Complainant) - **Three Hundred and Thirty-Seven Thousand, Five Hundred (337,500)**

- iii. An Enforcement Notice to issue to the Respondent.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 5th day of January 2026



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

