



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 1654 OF 2025**

**JASON ESEUNA.....COMPLAINANT**

**-VERSUS-**

**NURMAY MISSIONS  
FOUNDATION.....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 from the Complainant with the allegation that his image is being used for commercial purposes without a lawful basis.

**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 28<sup>th</sup> October 2025. The complaint was 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 notified the Respondent of the complaint filed against her *vide* letter dated 3<sup>rd</sup> December 2025. The notification letter was referenced ODPC/CIE/CON/2/1 (905). The Office in the said Notification of Complaint requested that the Respondent respond to the allegations against it within the stipulated timelines contained in the notification.
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 Respondent 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. As at the date of this determination, the Respondent failed, refused, or neglected to respond to the Notification of Complaint.

10. This determination is therefore pursuant to Regulation 11(2) of the Enforcement Regulations which provides that where a Respondent does not take any action as contemplated in law, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and these Regulations.

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

11. The Complaint concerns the Complainant's allegations that the Respondent used his images for promotional and commercial gain without the Complainant's knowledge or consent

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

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

12. The Complainant stated that in the year 2018, he was an intern at Nurmay Missions Foundation in Kilifi, where he was stationed for a period of Six (6) months. During this period, he states that his photo was taken and recently in the year 2025, he noted that the Respondent was using his image on their website landing page for advertisement purposes without his knowledge and/or consent.

13. He stated that the images had been taken during the Complainant's internship period without full disclosure whatsoever or consent whatsoever.

14. The Complainant further averred that he was not informed of the purpose for which the photo was being taken, nor did he give any consent for the said use of his personally identifiable data

##### **ii. THE RESPONDENT'S RESPONSE**

15. The Respondent was non-responsive and did not respond to the Notification of Complaint filed against it. Therefore, the allegations levelled against it remain uncontroverted.

#### **F. ISSUES FOR DETERMINATION**

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

- i. Whether the Complainant's personal data was lawfully processed; and
- ii. Whether the Complainant is entitled to any remedies under the Act.

**I. WHETHER THE COMPLAINANT'S PERSONAL DATA WAS PROCESSED LAWFULLY.**

17. The Complainant alleged that the Respondent used his image on its website to advertise itself without his knowledge and or authorization.

18. Section 2 of the Act defines processing as *"any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means such as:- (a) collection, recording, organization, structuring; (b) storage, adaptation or alteration; (c) retrieval, consultation or use; (d) disclosure by transmission, dissemination, or otherwise making available; or (e) alignment or combination, restriction, erasure or destruction."*

19. From this definition, it is evident that at all material times, the Respondent was processing the Complainant's personal data.

20. Section 30 (1) (a) of the Act provides 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.

21. The Act goes further to state the conditions of consent. It states as follows with regard to the conditions of consent:-

*32. Conditions of consent*

*(1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.*

*(2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.*

*(3) the withdrawal of consent under sub-section(2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.*

*(4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on the consent of the processing of personal data that is not necessary for the performance of that contract.*

22. From the evidence adduced to this Office, it is evident that at all material times the Respondent's website contained the Complainant's personal data. This use required the Complainants' knowledge and informed consent.

23. Despite being given an opportunity to respond to the Complaint, the Respondent did not file a response to the allegations brought by the Complainant. As stated above, the Respondent was duly notified of the complaint and was required to respond to the allegations against it within the prescribed timelines contained in the notification letter. As such, the Complainant's allegations remain uncontroverted. The Respondent did not discharge its burden of proof as envisaged under Section 32 (1) of the Act.

24. This Office, therefore, finds that as far as issue no (i) is concerned, the Respondent processed the Complainant's personal data unlawfully.

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

25. Under 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.

26. Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 further contemplates, as a remedy, the issuance of enforcement notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto.

27. This Office is guided accordingly, and an Enforcement Notice shall issue upon the Respondent if it does not delete and or pull down the Respondent's personal data from all its websites and platforms within fourteen (14) days from the date of this determination.

## **G. FINAL DETERMINATION**

28. In the ultimate, the Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable.

- ii. The Respondent is hereby ordered to delete and or pull down the Respondent's personal data from all its website and provide proof thereof to this Office within fourteen (14) days from the date of this determination.
- iii. Failure to adhere to (ii) above, an Enforcement Notice shall hereby be issued.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 26<sup>th</sup> day of January 2026.



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

