



**OFFICE OF THE DATA PROTECTION COMMISSIONER**  
**ODPC COMPLAINT NO. 0537 OF 2023**

**LUCY KINYANJUI.....COMPLAINANT**

**-VERSUS-**

**EASY COACH LIMITED.....RESPONDENT**

**DETERMINATION**

*(Pursuant to Section 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 Constitution of Kenya 2010, under Article 31 (c) and (d) 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.
2. Section 8 (f) of the Act provides that the Office of the Data Protection Commissioner (hereinafter known as 'the Office') can receive and investigate any complaint by any person on infringements of the rights under the Act. Furthermore, Section 56 (1) 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.
3. 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

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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. It is on that basis that, the Office received a complaint dated 11<sup>th</sup> April, 2023 pursuant to Section 56 of the Act and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (the Regulations) from the Complainant who was an aggrieved data subject.
5. The Respondent is a Kenyan bus transportation company that offers passenger and courier services, and the Complainant was a passenger in one of the Respondent's vehicles on 10<sup>th</sup> April 2023.
6. Pursuant to Regulation 11 of the Regulations, the Office, notified the Respondent of the complaints filed against them vide a letter dated 13<sup>th</sup> June, 2023 referenced ODPC/CONF/1/5 VOL 1 (291) and required their response within 21 days. Upon receipt of the responses, the Office conducted investigations as required by Regulation 13 (1)(d) of the Regulations.
7. This determination is therefore as a result of analysis of the complaint as received, the responses from the identified Respondents and investigations conducted by the Office.

#### **B. NATURE OF THE COMPLAINT**

8. The Complainant boarded one of the Respondent's transport vehicles on 10<sup>th</sup> April, 2023 and upon arrival, she started receiving phone calls from the owner of 0732XXX451 addressing her using her name and accusing her of stealing his luggage.
9. The Complainant visited the Respondent's office whereby they allegedly admitted that it was likely that the caller had accessed her personal details from the passengers' manifest.

10. It is on this basis that the Complainant lodged a complaint with this Office on 11<sup>th</sup> April, 2023 alleging that the Respondent caused her personal details to be accessed without her consent.

11. The Complainant seeks that the Respondent be cautioned from sharing details of their passengers' data without their consent and utilize handling of matters through internal dispute resolution mechanisms.

### **C. ANALYSIS OF EVIDENCE ADDUCED**

#### **I. THE COMPLAINANT'S EVIDENCE**

12. The Complainant filled the complaint's form and attached screenshots of the third party's messages accusing her of stealing his bag. In one of the messages, the third party refers to her name and states; "*Lucy Kinyanjui it's not good practice.*" According to the Complainant, only Easy Coach had her details and she had not shared these details with any other person. She also indicated that she shared her Identity Number (ID no.) with the Respondent.

13. The Complainant attached a passenger's travel ticket that she was issued by the Respondent that had her personal details, particularly, her names, ID number, and her phone number.

14. The Complainant had reported the matter to the police and attached the OB number receipt that she was issued at the police station.

#### **II. THE RESPONDENT'S EVIDENCE**

15. The Respondent provided a response to the Notification of Complaint vide a letter dated 29<sup>th</sup> June, 2023 referenced EC/CO/ODPC 1.

16. In their response, they indicated that owing to the Notification of Complaint, they conducted internal investigations to ascertain:

- i. If and how the alleged Complainant's information was shared; and
- ii. The scope of the Complainant's information shared.

17. The Respondent indicated that they collect and process personal data through information that a customer, member of staff, agent, supplier, or job applicants provide in order to acquire their services.

18. In this particular case, they collected the Complainant's information through their booking platform for the purposes of travelling and she submitted the following details during the booking process:

- i. Her name, address, phone number, identity document type and number, date of birth, email address, age and gender;
- ii. CCTV footage and other information collected through electronic means in their premises and/or booking office; and
- iii. Information with regards to the details of the payment made through M-PESA (Lipa na M-PESA).

19. In line with their Privacy and Data Protection policies, all the information that the Respondent collects is stored in their secure servers which is where the Complainant's personal information is currently stored.

20. The Respondent averred that they prepare a passengers' manifest which is shared with the drivers for verifications and auditors for financial management and reporting purpose and is stored under lock and key and only retrieved for specific purposes which include legal and financial compliance.

21. The Respondent also indicated that their drivers are given the Passenger manifest for purposes of, ensuring that when there is a stop over for any reason, all passengers return to the vehicles and their specific seats so that none of the passengers are left behind. This indicates that this could have been the manner in which the third party obtained the Complainant's name and phone number.

22. The Respondent stated that the information collected is used for;

- i. Completing a contract between their customers i.e., provision of travel services.

- ii. Sending promotional information but with clear opt-out mechanism.
- iii. Fulfilling the legitimate interest of providing the services required by the Complainant (travel services).
- iv. Fulfilling their regulatory and legal obligations e.g., health and safety, insurance claims and any other legal claims.

23. The Respondent stated that they fulfil their obligation to inform all individuals the purposes for which their data is collected and how it shall be used in accordance with section 29 of the Act and their Privacy Policy which can be easily accessed on their website.

24. In light of the above, according to the Respondent, all individuals, including the Complainant, are prompted to confirm acceptance of their Privacy Policy before the booking process is complete which communicates acceptance of the contents of the policy.

25. The Respondents indicated that they have put in place mitigation measures to address the matters arising from the complaint including:

- i. Their a Privacy Policy which indicates the procedures for handling queries or questions from their customers;
- ii. They have put in place a Complaints and Request Handling Policy which indicates complaints handling procedures;
- iii. They shall re-issue their Data Protection Policy and Privacy Policy to their customer care team and quarterly trainings on these policies;
- iv. Training of their staff members.
- v. They are adopting and currently implementing mitigation measures including redacting the details on the passenger manifest such that only managers of stations have the right to access the full details of individual customers and the manifest handed over to the driver shall only have the name of the individual, a redacted phone number and ID no.
- vi. In line with their Data Protection Policy, only persons who need to access personal data will be allowed to access the same.

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26. Additionally, the Respondents stated that they have put and continue to put in place technical and organizational safeguards to ensure that the complaint does not occur again.

27. The Respondents attached their Data Protection Policy, Privacy Policy and their Complaints and Requests Handling Policy. They also attached a draft training schedule and the new Passenger Manifest that shall be shared with their drivers for the purpose of compliance.

#### **D. ISSUES FOR DETERMINATION**

28. Having considered the nature of the complaint, and the evidence adduced by all parties to the complaint, the following are the issues for determination of this complaint:

- i. Whether the Respondent collects, stores and processes personal data in accordance with the Act;
- ii. Whether the Respondent fulfilled the duty to notify under section 29 of the Act;
- iii. Whether there was any legal basis relied upon to process personal data as per Section 30 of the Act; and
- iv. Whether the Respondent has deployed sufficient mitigation measures to address similar complaints.

#### **I. WHETHER THE RESPONDENT COLLECTS, STORES AND PROCESSES PERSONAL DATA IN ACCORDANCE WITH THE ACT**

29. Section 25 of the Act provides for the principles of data protection. Relevant to this complaint are the principles that every data controller or data processor shall ensure that personal data is-

- i. Processed in accordance with the right to privacy of the data subject;
- i. Processed lawfully, fairly and in a transparent manner in relation to any data subject; and
- ii. Collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes.

30. As aforementioned, the Respondent in their response demonstrated the information that they collect from their customers, the manner in which they collect and process their customers' personal data, the reasons for collection and how they store the personal data. Amongst the mitigation measures in place in order to address similar complaints include:

- a) The details of the passenger manifest to be greatly redacted where only managers have the right to access the full details of the individuals.
- b) The manifest handed over to the driver will only have the name of the individual and ID number in line with their Data Protection Policy.
- c) The Passenger manifest will also indicate that any individual who has any concerns to contact their customer care.

31. This Office is cognisant of the fact that the Respondent had a legal basis under section 30 of the DPA to collect and process the Complainant's personal data as per their internal policies and procedures. However, this data should be stored securely and not shared without the consent of the Complainant. The third party was able to access the Complainant's personal data unlawfully thereby leading to the lodging of this complaint.

32. The Respondent has however demonstrated compliance with the Data Protection Act with regards to the collection, processing and storage of personal data as per Section 25 of the Act and upheld the principles of data protection.

## **II. WHETHER THE RESPONDENT FULFILLED THE DUTY TO NOTIFY UNDER SECTION 29 OF THE ACT**

33. Section 26 of the Act provides for the rights of a data subject which includes the right to be informed of the use to which their personal data is to be put. Further, Section 29 gives a data controller the obligation to:

- i. inform the data subject of the rights of a data subject specified under Section 26;

- ii. the fact that personal data is being collected; and
- iii. the purpose for which the personal data is being collected.

34. The Respondent has a Data Protection Policy in place which contains the rights of the data subject on pages 10-12. The Respondent avers that this Privacy Policy is available on its website and through preliminary investigations, this Office has established that indeed the policy is on the Respondent's website.

35. The Respondent's customers are prompted to confirm acceptance of the Privacy Policy before the booking process is complete. The Privacy Policy contains information informing the data subjects that their personal data will be collected in the course of service provision by the Respondents. This is contained in page 2 of the Policy.

36. Therefore, by accepting the Respondent's Privacy Policy, the Complainant was informed of her rights, the indication that her personal data will be collected and the purposes for which the personal data will be collected.

### **III. WHETHER THERE WAS ANY LEGAL BASIS RELIED UPON TO PROCESS PERSONAL DATA AS PER SECTION 30 OF THE ACT**

37. Section 30 of the Act provides for the lawful processing of personal data. Specifically, subsection 1 (b) provides that a data controller shall not process personal data unless the processing is necessary for the performance of a contract to which the data subject is a party.

38. The Respondent collected the Complainant's data in order to complete the contract between the Complainant and themselves to ensure her booking was confirmed and be provided with the travel services offered by the Complainant.

39. The Respondent therefore had a legal basis to collect and process the Complainant's personal data in this regard.



#### **IV. WHETHER THE RESPONDENT HAS DEPLOYED SUFFICIENT MITIGATION MEASURES TO ADDRESS SIMILAR COMPLAINTS**

40. According to Section 41 of the Act, data controllers are mandated to implement appropriate technical and organisational 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 of personal data.

41. The Complainant sought relief from this Office to caution or stop the Respondent from sharing details of passengers without their consent and without first handling issues through internal mechanisms.

42. Additionally, in the Notification of Complaint to the Respondent, this Office directed the Respondent to provide details (in writing) of:

- i. The mitigation measures adopted or being adopted to address matters arising from the complaint;
- ii. The technological and organizational safeguards that have been put in place to ensure that such occurrence mentioned in the complaint do not take place again; and
- iii. Their data protection policy outlining the complaints handling mechanisms to deal with matters relating to the rights of a data subject under the Act, the Regulations, and any alleged contravention directed to your attention by data subjects.

43. In their response, the Respondent provided their Data Protection and Privacy Policies and their Complaints and Requests Handling Procedures. They also provided a training schedule of their members of staff which was to be conducted between 3<sup>rd</sup> and 7<sup>th</sup> July.

44. The Office finds that these measures are sufficient organizational measures to ensure that complaints of this nature are properly addressed.

45. In light of the above, the Office directs that the Respondents provide proof that indeed their staff were trained according to the training schedule provided. This

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information shall be availed within **seven (7) days** of receipt of this Determination.

46. Finally, this Office notes that the Complainant sought that the Respondent be cautioned from sharing details of their passengers' data without their consent and utilize handling of matters through internal dispute resolution mechanisms. After reviewing the Respondent's case, the Office concludes that the Respondent has implemented several organizational steps and safeguards to avoid such situations from occurring, as requested by the Complainant.

#### **E. FINAL DETERMINATION**

47. In consideration of all the facts of the complaint and evidence tendered, the Data Commissioner makes the following determination:

- i. The Respondent has demonstrated that it collects, stores and processes personal data in accordance with the Act;
- ii. The Respondent demonstrated that they fulfilled the duty to notify under Section 29 of the Act;
- iii. The Respondents demonstrated the legal basis relied upon to process personal data as per Section 30 of the Act;
- iv. The Respondent has demonstrated efforts to put in place organizational measures to address similar complaints.
- v. The Data Commissioner directs the Respondent to provide proof of training of staff within **seven (7) days** of receipt of this Determination.
- vi. In alternative to (v) above, and should the Respondent not comply with the same, an Enforcement Notice to issue.

**DATED** at **NAIROBI** this 7<sup>th</sup> day of JULY 2023.



**Immaculate Kassait, MBS**

**DATA COMMISSIONER**