



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 0796 OF 2023**

**TERESTA KARUNGARI..... COMPLAINANT**

**-VERSUS-**

**BRANCH MICROFINANCE BANK.....RESPONDENT**

**DETERMINATION**

*(Pursuant to Section 8(f), 56 and 57 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 recognizes the right to privacy. Consequently, in an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter "the Act") was enacted. Section 8 (1) (f) 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) 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.
2. The Office of the Data Protection Commissioner (hereinafter as "the Office") is a regulatory Office, established pursuant to the Data Protection Act, 2019. The Office 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

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providing data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.

3. The Office received a complaint dated 15<sup>th</sup> May 2023 by Teresia Karungari.
4. On 5<sup>th</sup> June 2023, the Office in the exercise of its mandate as envisaged under the Act and in the promotion of justice, notified the Respondent of the complaint filed against it. The Respondent received the notification letter on 5<sup>th</sup> June 2023. In the notification of the complaint filed against the Respondent, the Respondent was to provide: -
  - a) A response to the allegation made 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 the Response in (a) above;
  - c) Details of how the Respondent collected, stored, and processed the complainant's data;
  - d) The legal basis relied upon to process and engage with the complainant and whether or how the Respondent fulfil the duty to notify under Section 29 of the act;
  - e) Details (in writing) of:
    - a. The mitigation measures adopted or being adopted to address matters arising from this complaint;
    - b. 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
    - c. Respondent's 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.
  - f) Demonstration (by way of a written statement) of the level of compliance with the requirements under the Act and the Regulations. In particular, an

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elaborate representation of how a data subject can exercise their rights in relation to data protection.

5. On 15<sup>th</sup> June 2023, the office received a response from the Respondent providing the Company's Data Protection Policy and the Respondent's Response to the complaint lodged against it.
6. This determination is pegged on the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations 2021 which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

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

7. The complaint relates to the infringement of the data subjects' rights wherein the Complainant alleges that the Respondent had been spamming her email with messages claiming that she had not cleared the Century microfinance loan yet she had cleared the loan in 2022.
8. The Complainant claims that the Respondent had been sending her three messages every day for several months claiming she had not cleared the microfinance loan.

#### **C. THE RESPONDENT'S RESPONSE TO THE COMPLAINT**

9. The response to the complaint was made vide a letter dated 15<sup>th</sup> June 2023 and received on 15<sup>th</sup> June 2023.
10. In its response, the Respondent did address the allegations contained in the complaints leveled against it. The Respondent responded to the complaint and went ahead to state how it had complied with the Data Protection Act.
11. As to compliance with the Act, the Respondent stated that: -

- a) The complainant has been one of their clients since 11<sup>th</sup> April 2014. Further that the last loan facility obtained by the complainant was successfully cleared on the 11<sup>th</sup> of May 2021.
- b) The Company provided the loan account customer statement and a letter of non-indebtedness for the Complainant as evidence affirming the complainant had no outstanding loan.
- c) The Respondent stated that due to an oversight, the Complainant's name was still included on the list of default borrowers resulting in the unintended communication.
- d) The Respondent stated, as to the mitigation measures adopted to address matters arising from the complaint, that they promptly rectified the loan account information of the complainant, and ceased all communication regarding an outstanding loan to the complainant.
- e) Further the Respondent stated that they conducted a comprehensive review of their borrower list, updating loan balances accurately and eliminating discrepancies and inaccuracies in their records.
- f) On technological and organizational safeguards put in place, the Respondent stated that the institution had reinforced their review and quality assurance procedures to maintain ongoing monitoring of records of their borrows and communications, to identify and address potential issues promptly and ensure their clients receive accurate and appropriate information from them.
- g) The company limits the collection and processing of personal data strictly to the extent necessary to provide our customers with the banking services they require, to comply with regulatory requirements.
- h) The Respondent provided their Data Protection Policy, which contains the data protection complaints procedure.

#### **D. ISSUE FOR DETERMINATION**

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- i. Whether the Respondent has violated the principles of Data Protection as provided for in the Data Protection Act, 2019.

#### **E. ANALYSIS**

#### **WHETHER THE RESPONDENT HAS VIOLATED THE PRINCIPLES OF DATA PROTECTION AS PROVIDED FOR IN THE DATA PROTECTION ACT, 2019.**

12. As a point of departure, this Office would like to note that after the Respondent received the notification of the complaint lodged against it, it rectified the Complainant's data stored in its system and ceased the unnecessary communication with the Complainant.
13. Section 25 of the Data Protection Act, 2019 provides for the Principles of data protection. Section 25 (f) in particular, states that "***Every data controller or data processor shall ensure that personal data is 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.***"
14. Further, section 26 states that ***a data subject has a right (d) to correction of false or misleading data; and (e) to deletion of false or misleading data about them.***
15. It is evident that the Respondent had custody of the Complainant's personal data. Therefore, they had a responsibility under the Act to ensure that the personal data of the complainant is accurate and kept up to date and take appropriate measures to rectify or erase inaccurate data promptly.
16. From the complaint and the response, it is evident that the Respondent failed to comply with the provisions of the Act. The Respondent failed to ensure personal data of the Complainant is accurate and kept up-to-date.

17. The failure of the Respondent to uphold the principles of Data Protection consequently led to the Complainant's name being listed in the default borrowers list. Further, the Complainant received numerous spam messages from the Respondent concerning the microfinance loan.
18. The Respondents admitted that as an "oversight" which led to the Complainant's name to continue being part of the list of default borrowers which resulted in the unintended communications to the Complainant despite the Complainant having already settled the outstanding loan balance.
19. Although the Respondent stated that they had promptly updated their records and rectified the matter, they should have ensured the information of their clients are accurate and up-to-date at all material times. As such, the Respondent has violated the principles of Data Protection as provided for in the Data Protection Act, 2019.
20. In as much as there seems to be a violation of the principles of Data Protection, it is not lost on our mind that the Complainant did not exercise her right with the Respondent on the first instance and that it used this office as a first port of call. When this office notified the Respondent of the complaint the Respondent rectified and updated its records with regards to the complaint. As such the complaint stands resolved. The Respondent has since ceased and or stopped the unnecessary communication with the Complainant.
21. In addition to the foregoing, the Respondent has adduced evidence in demonstration of their immense compliance with the Data Protection Act and Regulations. On this, the Office would like to note that Compliance is an ever-continuous process and that compliance needs not only be seen on paper but also in practice through implementation and operationalization.

#### **F. FINAL DETERMINATION**

22. The Data Commissioner, therefore, makes the following final determination;
- a. The Complaint against the Respondent by the Complainant stands resolved and as such it is marked as closed.

b. Parties have the right to appeal to the High Court of Kenya.

DATED at **NAIROBI** this 2<sup>nd</sup> day of August 2023.



Immaculate Kassait, MBS



