



OFFICE OF THE DATA PROTECTION COMMISSIONER

**ODPC COMPLAINT NO. 1050 OF 2023 AS CONSOLIDATED WITH
COMPLAINT NO. 1051 OF 2023**

CHANTAL MARISSA PANDE.....1ST COMPLAINANT

JOEL STEPHEN KUNGA.....2ND COMPLAINANT

-VERSUS-

CREDIT BANK PLC.....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 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. The Office of the Data Protection Commissioner (hereinafter 'the Office' or 'this Office') was established pursuant to Sections 5 and 6 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.
3. Section 8 (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.

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4. It is on that basis that the Office received two complaints dated 20th June 2023 pursuant to Section 56 of the Act and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 ('the Enforcement Regulations').
5. The Respondent is a commercial bank in Kenya licensed by the Central Bank of Kenya (CBK) to carry out banking business under the Banking Act, Cap 488.
6. The complaints dated 20th June 2023 and received by this Office on 21st June 2023 were filed on behalf of the Complainants by the firm of Ojienda & Company Advocates ('Complainants advocates') and contained two (2) annexures as evidence. The same will be analysed in subsequent paragraphs herein.
7. The complaints raised similar issues against the Respondent and were consolidated pursuant to Regulation 9 (1)(a) of the Enforcement Regulations and subsequent to the complainant's consent *vide* their advocate's letter dated 26th June 2023.
8. Pursuant to Regulation 11(1) of the Enforcement Regulations, the Office notified the Respondent of the complaint filed against them 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.
9. This determination is therefore as a result of analysis of the complaint as received, the responses from the Respondent and investigations conducted by the Office.

B. NATURE OF THE COMPLAINT

10. The Complainants had a bank-customer relationship with the Respondent. The Complainants alleged that the Respondent caused to be published to third parties (Kenya News Makers/Joseph Wambugu), their personal data *to wit* –

"The 10 percent cut has been paid in cash, mpesa or cash to the account of the branch manager's brother and her daughter's account below. These are Joel Kung'a (006XXXXXXXX313) and Chantal Marissa Pande (006XXXXXXXX675) respectively.

(The account numbers have been redacted for purposes of this determination)

11. The Complainants alleged that the said application (*sic*) shared their sensitive personal data to third parties as a result which they suffered public ridicule and distress.
12. The Complainants stated that the Respondent failed to protect their personal data in line with Section 25 of the Act and failed to report the data breach as per Section 43 of the Act.
13. They attached certified copies of their bank statement containing their details from the Respondent Bank and an extract of the article by Kenyan Newsmakers dated 6th March 2023 authored by one Joseph Wambugu.
14. The Complainants sought for the available remedies including appropriate compensation.

C. THE RESPONDENT'S RESPONSE

15. The Respondent responded to the complaint through a letter dated 10th July 2023 and stated that they are aware that the 2nd Complainant and the 1st Complainant are the daughter and brother of the branch manager of the Bank's Westlands Branch respectively, until 23rd May 2023.
16. The Respondent stated that on or about February 2023, it was notified by the said former branch manager that a whistleblower had written to the Directorate of Criminal Investigations ('DCI') and other investigative authorities alleging that there were money laundering cases involving her, other staff and customers at the Westlands Branch. According to her, the DCI was to make a formal complaint against the Bank.

The Respondent averred that no such complaint was ever made and it was informed that on further investigations, the investigative authorities, including the DCI, found that the allegations by the whistleblower had no legal basis and closed the file.

17. An article by James Wambugu was then published in Kenya News Makers and social media levelling similar money laundering allegations against the former branch manager, the Complainants and some of its customers.
18. The Respondent stated that in line with its internal policies and procedures and the CBK prudential guidelines, it carried out internal investigations to ascertain the veracity of the allegations. It took appropriate remedial actions in line with the findings of its investigations.
19. The Respondent stated that it did not share the data with any third party or investigative agencies as alleged. It only learnt of the money laundering

allegations made to DCI and the other authorities through their former branch manager.

20. Further, in its assertions, the Respondent stated that the article which was quoted by the complainants' advocates in the complaint clearly states the source of the information to the blogger. Paragraph 4 of the quoted text on the first page of the letter containing the complaint read:

"The details of the high-tech money laundering scheme are contained in a whistleblower letter written to the Director of Criminal Investigations (DCI), Banking Fraud Investigation Unit (BFIU), Nairobi County's Criminal Investigations Officer, EACC and Credit Bank Headquarters."

21. The Respondent stated that it was clear that the author of the article obtained the information on the two complainants from a letter written to the DCI by a whistleblower and not from itself.
22. In its response, the Respondent attached several policies and frameworks which it indicated that guides its organization on processing and sharing customer information.
23. The Respondent stated that it confirms it took mitigation measures once it was aware of the money laundering and data breach allegations. These measures include internal investigations, trainings, data privacy gap assessments, review of their policies and procedures and disciplinary action against staff implicated by investigations findings. However, the Respondent indicated that none of the staff was implicated for unlawful disclosure of personal data.
24. The Respondent reiterated that it did not share any personal data of the Complainants and that the information was obtained from the letter by the whistleblower to DCI.
25. The Respondent stated that it endeavours to have all internal policies and procedures compliant with the Act and it has adopted the best practices in the management of personal data to ensure compliance and privacy of customers, employees and other stakeholders.

It stated that it has adopted inbuilt mechanisms for assurance purposes including privacy by default and design. It also indicated that they have a clear complaint handling mechanism and, in their undertakings, and processes, they recognize data subjects' rights.

26. The Respondent indicated that its data protection policy clearly outlines the complaints handling mechanisms on Clause 3.1 -- **Contact information**

whereby a customer can contact their data protection officer if they have any questions or concerns regarding processing of their personal data.

27. The Respondent submitted that it is not liable for the alleged breaches of personal data of the Complainants. The information in the article by James Wambugu was obtained from the letter to the DCI which they were not aware and not responsible for.

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 rights of the Complainants were violated;
- ii. Whether the Respondent fulfilled its obligations under Section 43 of the Act; and
- iii. Whether the Complainants are entitled to the remedies sought.

I. WHETHER THE RIGHTS OF THE COMPLAINANTS WERE VIOLATED

29. The Complainants submitted that the Respondent failed to protect their personal data in line with Section 25 of the Act.

30. Section 25 of the Act provides that data controllers and data processors should ensure that personal data is processed in accordance to the right to privacy of the data subject, that personal data is processed lawfully, fairly and in a transparent manner and that the 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.

31. The Complainant did not demonstrate how the Respondent violated the principles of data protection in their complaint. They did not demonstrate that indeed it was the Respondent who unlawfully revealed their names and bank details to the third party.

32. The Respondent in their response have proven to this Office that they did not violate the Complainants' rights. They were not aware of the publication of the article and only knew about the money laundering allegations from their former branch manager, which allegations do not touch on matters data protection.

33. Therefore, it is the finding of this Office that the rights of the Complainants were not violated by the Respondent as there is no evidence that it is the Respondent that released or revealed the complainants' personal data to the third party.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER SECTION 43 OF THE ACT

34. Section 43 of the Act provides for notification and communication of breach, where personal data has been accessed or acquired by an unauthorised person, and there is a real risk of harm to the data subject whose personal data has been subject to the unauthorised access. A data controller is mandated to notify the Data Commissioner without delay, within seventy-two hours of becoming aware of such breach and communicate to the data subject in writing within a reasonably practical period, unless the identity of the data subject cannot be established.

35. Having found that there was no evidence linking the Respondent to the disclosure of the complainants' personal data to the third party, the obligations under the above provision do not apply in this complaint.

III. WHETHER THE COMPLAINANTS ARE ENTITLED TO THE REMEDIES SOUGHT

36. Having established that the Respondent did not violate the Complainants' rights, the remedies sought by the Complainants shall not be granted by this Office.

37. The Complainants did not demonstrate to this Office any financial loss occasioned by the alleged infringement of their rights. Therefore, the order for compensation is not justified and shall not be granted.

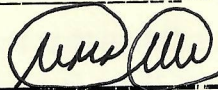
E. FINAL DETERMINATION

38. This Office notes from the evidence available that there are grave allegations of money laundering and related financial crimes under the Proceeds of Crime and Anti-Money Laundering Act, 2009 and the Tax Procedures Act, 2015. To this end, this file shall be forwarded to the Financial Reporting Centre and the Kenya Revenue Authority for further action.

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

- i. The Complainants' rights were not violated under the Act.
- ii. The Complaint is dismissed.

DATED at NAIROBI this 18th day of September 2023


Innoculate Kassait, MBS
DATA COMMISSIONER