



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 1461 OF 2023**

**WYCLIFFE KEYA..... COMPLAINANT**

**-VERSUS-**

**KCB BANK KENYA LTD.....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 Office received a complaint from Wycliffe Keya, hereinafter the 'Complainant' against KCB Bank Kenya Limited (Kapsabet Branch) hereinafter the 'Respondent'. The Complainant lodged his complaint on 13<sup>th</sup> August 2023 and his claim was that the Respondent breached his privacy through one of its agents, a debt recovery entity, hereinafter the 'Data Processor'. The Complainant further claims that he had taken a facility with the Respondent which he cleared, but his details were still forwarded to the Data Processors who have been calling and harassing him insistently.

**B. LEGAL BASIS**

2. 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 'the Act') was enacted.
3. The Office of the Data Protection Commissioner ('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 (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) 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.

### **C. BACKGROUND OF THE COMPLAINT**

5. The Complaint is against KCB Bank Kenya Limited, a financial institution.
6. The Complainant states he took a facility with the Respondent. The agreement between himself and the Respondent was that it would be deducted from his salary. A few years later, he received a notification asking him to pay the overdraft that he had presumed was already deducted from his salary. He wrote to the Respondent's branch manager and subsequently paid for the overdraft which had accrued interest.
7. The Complainant later confirmed the status of his account and found that the Respondent had cleared him and he requested for a CRB clearance from Metropol Limited, which he received.
8. In August 2023 the Complainant was contacted by a debt recovery agency asking him to repay the Respondent's loan which he owed.
9. The Complainant reached out and shared his bank receipts for repayment of the loan and the Metropol clearance certificate with the debt recovery entity, but the Complainant states that they ceaselessly persisted with the calls and harassment; and so, he opted to lodge an official complaint with the Office against the Respondent.



10. Pursuant to Regulation 11 of the Data Protection (Complaints Handling Procedure & Enforcement) Regulations, 2021 ('Enforcement Regulations'), the Office notified the Respondent of the complaint filed against it *vide* a letter dated 30<sup>th</sup> August, 2023 referenced ODPC/CONF/1/5 VOL 1 (393) and required their response within 21 days. In the letter, the Respondent was to provide: -

- a. Detail of the debt recovery agent in this particular case.
- b. The contract agreement between KCB and the debt recovery agent (data processor).
- c. Any relevant materials or evidence relating to the debt recovery agent.

11. Further, the Office, notified the Data Processor of the complaint *vide* a letter dated 7<sup>th</sup> September, 2023 referenced ODPC/CONF/1/5 VOL 1 (407) and required their response within 21 days. In the letter, the Data Processor was to provide:

- a. A response to the allegation made against them by the complainants;
- b. Any relevant materials or evidence in support of the response;
- c. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant
- d. An indication as to when the alleged breach of personal data happened.
- e. The legal basis relied upon to process and engage with the complainants, whether or how they fulfil the duty to notify under Section 29 of the Data Protection Act, 2019;
- f. Details of how they fulfil the Data Subject's right of rectification and erasure as per Section 40 of the Act
- g. The technological and organisational safeguards that have been put in place to ensure that such occurrence mentioned in the Complaint does not take place again.
- h. The Organization's data protection policy outlining the complaints handling mechanism to deal with matters relating to the rights of data subjects under the Act, the Enforcement Regulations and any alleged contravention directed to your attention by data subjects.



- i. Demonstration (by way of written statement) of your level of compliance with the requirements under the Act and the Enforcement Regulations. In particular, an elaborate representation of how data subject can exercise their rights in relation to data protection.

12. 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.

#### **D. SUMMARY OF EVIDENCE ADDUCED**

##### **i) Complainant's Evidence**

13. The Complainant furnished the Office with -

- a. A printout from Metropol of the principal amount owed in debt which read as Ksh.14,500
- b. KCB Bank transactional receipts indicating payment of Ksh. 20,520 towards the debt.
- c. KCB Clearance codes for Metropol and TransUnion respectively for clearing his name from CRB.
- d. Print out of messages received from the debt collectors.
- e. Printed screenshots of the different numbers used by the debt collectors to send messages and calls.
- f. Emails between himself and the Respondent complaining about the Data Processor calling and messaging him on debt recovery which he didn't owe.
- g. The Respondent's response to these emails from the Complainant.

##### **ii) Respondent's Evidence**

14. The Respondent *vide* a letter dated 5<sup>th</sup> September 2023 wrote to the Office and attached -

- a. Service Level Agreement between itself and the Data Processor.
- b. Certificate of membership certifying that the Data Processor is a member of the Association of Debt Recovery Agents.
- c. Data Processor's business permit.
- d. KCB Group suppliers' code of conduct.



### iii) Data Processor's Evidence

15. The Data Processor through its advocates, wrote to the Office on 28<sup>th</sup> September 2023. They also attached an official email sent on 17<sup>th</sup> August 2023 between their client and the Respondent addressing the Complainant's debt status.

#### E. ANALYSIS OF EVIDENCE ADDUCED

16. The Complainant lodged a complaint with the Office against the Respondent for breach of privacy claiming the Respondent's debt collectors, the Data Processor herein, persistently messaged, called and harassed him on the basis that he had an outstanding debt with the Respondent.
17. In its response, the Data Processor through its advocates denied any liability with respect to the complaint and further stated that their client was acting under instructions from the Respondent.
18. The Data Processor *via* their advocates averred that their client only acts on files forwarded to them directly by their principal, who in this case is the Respondent. That at all material times the Data Processor was acting in good faith in its execution of instructions and that it would not know the status of accounts unless the Respondent shares this with them.
19. The Data Processor averred that it had no control over the decisions of the Respondent nor what the Respondent chooses to information disclose.
20. The Respondent avers that there exists an active contract between itself and the Data Processor, that the Data Processor is on record as a debt collector on behalf of the Respondent.
21. The Respondent *vide* email dated 17<sup>th</sup> August 2023 wrote to the Data Processor with instructions to close the file relating to the Complainant, Wycliffe Keya.
22. According to the evidence adduced by the Complainant, the text messages from the Data Processor still persisted even after instructions from the Respondent to desist from pursuing the Complainant.



23. The Complainant has on record text messages running all through to 21<sup>st</sup> August 2023 from the Data Processor asking him to repay a non-existent loan.

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

24. Having considered the nature of the complaint, the evidence adduced by all parties to the complaint and the investigations conducted by this Office, the issues for determination are therefore:

- i. Whether the Respondent or the Data Processor infringed on the Complainant's right to privacy according to the Act;
- ii. Whether the Respondent addressed the complainant's complaint; and
- iii. Whether the Complainant is entitled to the remedies sought for the alleged breach.

#### **I. WHETHER THE RESPONDENT OR THE DATA PROCESSOR INFRINGED ON THE COMPLAINANT'S RIGHT TO PRIVACY ACCORDING TO THE ACT**

25. Data subject's rights are outlined under Section 26 of the Act and they are: -

- a. to be informed of the use to which their personal data is to be put*
- b. to access their personal data in custody of data controller or data processor*
- c. to object to the processing of all or part of their personal data*
- d. to correction of false or misleading data; and*
- e. to deletion of false or misleading data about them*

26. In accordance with the data protection principles under Section 25 of the Act, every data controller or data processor shall ensure that personal data is: -

- a. processed in accordance with the right to privacy of the data subject*
- b. processed lawfully, fairly and in a transparent manner in relation to any data subject*
- c. collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes*
- d. adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed*
- e. collected only where a valid explanation is provided whenever information relating to family or private affairs is required*



- f. 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*
- g. kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and*
- h. not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject*

27. According to Section 25 of the Act, it is the Respondent's duty to ensure that the Complainant's data is processed in accordance with the right to privacy, that the data which has already been collected 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. It is also the Respondent's duty to keep the data collected and processed kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected.

28. The Complainant upon the first contact from the Data Processor, reached out to the Respondent to lodge a complaint against the Data Processor. He requested that the Respondent inform the Data Processor that there is no debt owed.

29. By reaching out to the Respondent on email on 10<sup>th</sup> August 2023, 16<sup>th</sup> August 2023 and 17<sup>th</sup> August 2023 and requesting for clearance of his debt status and communication of the same to the Data Processor, the Complainant exercised his right to correction of false or misleading data and the right to deletion of false or misleading data about them, by objecting to the processing of his data by the Data Processor.

30. In an email dated 18<sup>th</sup> August 2023, the Respondent wrote to the Complainant informing him that his request to stop the Data Processor from texting, calling and harassing him on the account that he had a debt owing, was actioned and resolved and that his debt was recalled, and account closed.

31. The Data Processor *vide* its letter dated 28<sup>th</sup> September 2023 attached an email dated 17<sup>th</sup> August 2023 from the Respondent with instructions that they should close the Complainant's file and that the debt was paid before outsourcing.



32. However, the Complainant continued to receive text messages and calls from the Data Processor to repay a loan that was already cleared and closed by the Respondent.

33. In view of the foregoing, the Office finds that the Respondent did not infringe on the rights of the Complainant. However, the Data Processor persistent pursuit of the Complainant even after the Respondent gave express instructions to close the Complainant's file indicated that the Data Processor acted beyond their mandate resulting in infringement of the Complainant's rights under the Act.

## **II. WHETHER THE RESPONDENT ADDRESSED THE COMPLAINANT'S COMPLAINT**

34. *Via* an email dated 10<sup>th</sup> August 2023, the Complainant reached out to the Respondent complaining that he had been persistently contacted by unknown persons demanding repayment of a loan which he did not owe. The Respondent responded *via* email dated 10<sup>th</sup> August 2023 assuring the Complainant that they will look into the matter and revert in 24 hours.

35. On 16<sup>th</sup> August 2023, the Respondent wrote to the Complainant *via* email informing him that his complaint was still under review for action. *Via* an email dated 18<sup>th</sup> August 2023, the Respondent wrote to the Complainant informing him that his complaint has been resolved, the alleged debt recalled, and his account officially closed.

36. In an email dated 17<sup>th</sup> August 2023, the Respondent wrote to the Data Processor instructing them to close the file under the Complainant's name.

37. The Respondent in its response to this Office as part of their evidence, attached the contract between itself and the Data Processor and the code of conduct, a guide of principles designed to help professionals conduct business.

38. The Respondent's code of conduct addresses Data Privacy, Protection and Information Security and states that all the Respondent's suppliers are required to comply with the KCB Group PLC Data Privacy and Protection Policy. It further states



that all suppliers shall collect personal information only for legitimate business purposes, use it in a legal, transparent, and secure manner.

39. The Respondent's code of conduct signed with the Data Processor states that its suppliers shall conduct themselves with respect in order to uphold and guard the Respondent's reputation at all times. Additionally, if the Respondent's suppliers undertake activities that may impair the Respondent's reputation, they shall disclose this immediately.

40. In view of the foregoing and the Respondent's actions to remedy the Complainant's complaint, the Office finds that the Respondent sufficiently addressed the Complainant's Complaint.

### **III. WHETHER THE COMPLAINANT IS ENTITLED TO THE REMEDIES SOUGHT FOR THE ALLEGED BREACH.**

41. The Complainant filed a complaint with the Respondent for breach of privacy. The Respondent upon receiving the complaint from the Complainant purposed to resolve the same by reaching out to the outsourced Data Processor to cease any further processing of the Complainant's personal data.

42. The Respondent instructions on 17<sup>th</sup> August 2023 *via* email to the Data Processor to cease further processing of the Complainant's personal data was not adhered to by the Data Processor. The Complainant was still contacted, and the harassment persisted.

43. In this regard, the Data Processor acted beyond their mandate by not actioning the Respondent's instructions to desist from further processing of the Complainant's data.

44. It is trite that damages must be proximately caused by the wrongful conduct of the Respondent.

45. The Office therefore finds that that the Complainant has not demonstrated *vide* evidence that he incurred any damage as a result of the Respondent's actions.

46. From the foregoing, the prayer for compensation against the Respondent is denied.



## G. FINAL DETERMINATION

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

- i. The complaint against KCB Bank Kenya Limited is dismissed.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within 30 days.

DATED at **NAIROBI** this 8<sup>th</sup> day of November 2023



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**Immaculate Kassait, MBS**  
**DATA COMMISSIONER**