



OFFICE OF THE DATA PROTECTION COMMISSIONER

**ODPC CONSOLIDATED COMPLAINTS NO. 1843 OF 2023 / NO. 1971 OF 2023/
NO. 1991 OF 2023/ NO. 2006 OF 2023/ NO. 2025 OF 2023 & NO. 2292 OF
2023**

**HUMPHREY MAKHANU..... 1ST COMPLAINANT
LYDIA NYANDIA.....2ND COMPLAINANT
STEPHEN OBIRA..... 3RD COMPLAINANT
ALLAN OMORO.....4TH COMPLAINANT
DOREEN OSORO.....5TH COMPLAINANT
ANONYMOUS.....6TH COMPLAINANT**

-VERSUS-

MULLA PRIDE LTD.....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 Office received complaints by Humphrey Makhanu, Lydia Nyandia, Stephen Obira, Allan Omoro, Doreen Osoro, Anonymous (hereinafter 'the Complainants') against Mulla Pride Limited (hereinafter 'the Respondent') alleging the violation of their right to privacy. The Complainants claimed that the Respondent unlawfully and irregularly collected and processed their personal data without their consent. The Respondent contacted them via calls and text messages demanding they reach out to unknown persons for loans previously acquired from the Respondent.

The Complainants further claimed that the Respondent outrightly stated in their text messages that they would insistently and ceaselessly continue contacting them until or unless the alleged loans are repaid.

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 (hereinafter '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 Office received several complaints by the Complainant on 29th September 2023; 9th October 2023; 10th October 2023; 11th October 2023; 12th October 2023 and 7th November 2023 pursuant to Section 56 of the Act and Regulation 4 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter the 'Enforcement Regulations') from the Complainants the aggrieved data subjects.
6. Mulla Pride Limited (hereinafter the 'Respondent') is a Digital lending company.

7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the complaints filed against it *vide* a letter dated 19th October, 2023 referenced ODPC/CONF/1/5 VOL 1 (453) and required their response within 14 days. In the notification of the complaint filed against the Respondent, the Respondent was to provide: -

- a) A response to the allegations made against it by the complainants;
- b) Any relevant materials or evidence in support of its responses;
- c) The standard contract between itself and the Complainant;
- d) The legal basis relied upon to process and engage with the Complainant, whether or how they fulfill the duty to notify under Section 29 of the Data Protection Act, 2019;
- e) Details of how it obtains, stores and processes personal data and whether the Complainants consent to their data being collected and processed.
- f) Details of:
 - a. The mitigation measures adopted or being adopted to address matters arising from the complaints;
 - b. The technological and organizational safeguards that have been put in place to ensure that such occurrences mentioned in the complaints do not take place again; and
 - c. 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 their attention by data subjects.
- g) Demonstration (by way of a written statement) of their level of compliance with the requirements under the Act and the Regulations. In particular, an elaborate representation of how a data subject can exercise their rights in relation to data protection.
- h) A representation of how data subjects can exercise their rights in relation to data protection.

- i) Any other information that it may wish the Office to consider with regard to the complaints.

D. NATURE OF THE COMPLAINTS

i. THE COMPLAINANTS' CASE

8. The Complainants claim that the Respondent, either directly or through its agents, repeatedly bombarded their phones with calls and text messages demanding that they contact unknown parties regarding loans granted by the Respondent and defaulted by the unknown parties.
9. In the evidence submitted to the Office, the text messages from the Respondent alleged that it will hold the Complainants liable for the defaulted loan if the defaulting parties do not repay the loans.
10. The Complainants have further independently stated that they are neither a client of the Respondent, neither have they sought for loans from it. Secondly the Complainants have neither shared their personal details with the Respondent and have neither guaranteed any loanees of the Respondent.
11. The 6th Complainant is a Human Resource Manager at a transport company. She delves further into the complaint and states that she has received calls and text messages from the Respondent, where the Respondent shares unauthorized personal details of employees in the said Company giving unreasonable and unlawful demands pertaining to her employees who may or may not be clients of the Respondent to the best of her knowledge.
12. She further states that she is not and has never been a client of the Respondent and has not at any time willingly shared her personal data with the Respondent personally or as the Human Resource Manager. She also states that she has not guaranteed any loanee. She attached evidence to the claims above.

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ii. THE RESPONDENT'S RESPONSE

13. The Respondent, via a letter dated 2nd November 2023 and 5th December 2023 and received by the Office on 7th November 2023 and 8th December 2023 responded to the Notification of Complaints.
14. On the Response dated 2nd November 2023 the Respondent stated that it does not access its clients' phonebook, and disputed this allegation.
15. The Respondent further claims that the client fills the details of the referees. Further that they have strict measures where its collection agents cannot access the referees provided by the clients.
16. The Respondent supports its argument on its terms and conditions which it states binds both itself and any client who subscribes to its financial services. by the Complainants.
17. The Respondent further claims that it does not have any standard contract with other parties other than its clients. It continues to state that it does not participate in direct selection of personal data of referees.
18. The Respondent states that it only processes its clients' personal data, and the legal basis it uses to process the same is the contractual between a financier and loanee.
19. The Respondent claims, in as far as the safeguarding data subjects' personal data, specifically the right to be notified, it is in the process of creating a mechanism for persons being listed as referees to consent to the same.
20. In the letter dated 5th December 2023, the Respondent adds, that in compliance with regulation 11 of the Data Protection (General) Regulations, 2011 it has initiated mitigation measures such as Alternative Dispute Resolution to prevent recurrence and address Complainants' concerns effectively.

21. The Respondent states that it continuously engaging in robust training programs to ensure compliance with the Act.
22. The Respondent requested the Office to withdraw complaints filed by the 5th and 6th Complainants on the basis that it promptly addressed and rectifies the Complainants' concerns. The Respondent states that it has expounded the 5th Complainant's details from its system and an official apology given via text message. The Respondent states it was unable to reach the 6th Complainant.

E. SUMMARY OF EVIDENCE ADDUCED

I. THE COMPLAINANTS' EVIDENCE

23. As part of the Complainants' evidence, they attached:

- a. Printed screenshots - text messages and call logs from the Respondent

II. THE RESPONDENT'S EVIDENCE

- a. Privacy policy
- b. Terms and Conditions
- c. A printed screenshot of a text message containing apology sent to the 5th Complainant

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 fulfilled its duty to notify the Complainants of the use of their contact details as per section 29 of the Act.
- ii. Whether there was any infringement of the Complainants' Rights as data subjects as provided for in the Data Protection Act, 2019.
- iii. Whether the Complainants are entitled to any remedies under the Act

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I. WHETHER THE RESPONDENT FULFILLED ITS DUTY TO NOTIFY THE COMPLAINANTS OF THE USE OF THEIR CONTACT DETAILS AS PER SECTION 29 OF THE ACT

25. Section 29 of the Act provides for the duty of a data controller or data processor to, before collecting personal data, inform the data subject of their rights under Section 26 of the Act, the fact that their personal data is being collected and the purposes for which their personal data is being collected among others.
26. Further, Section 28 of the Act provides that a data controller or data processor shall collect personal data directly from the data subject.
27. The Respondent in its response admitted to having contacted the Complainants in a bid to have them inform the borrowers of their outstanding loans. It stated that it obtained the contacts from their borrowers who provided the information voluntarily.
28. However, the Respondent has not sufficiently demonstrated that it took all precautionary measures to confirm and verify that the Complainants were properly and lawfully onboarded as referees, that they were duly informed that their numbers had been listed as emergency contacts and/or guarantors prior to contacting.
29. The Respondent, in the response dated 5th December 2023, it states that an apology has been issued to the 5th Complainant for the alleged breach of privacy, a printed screenshot of the apology in text message is attached and the Respondent proceeds to request the Office to withdraw the complaint against it by the 5th Respondent on the basis that the same stands resolved.
30. In its investigations, the Office finds that the Respondent's position on paragraph 29 is contradicting. On the response dated 5th December 2023, the Respondent states that it has no access to its clients' phonebook, neither does it access contacts without prior consent. The Respondent further states that the Respondent only

collects data directly from its clients and not other sources and the same is done with prior consent.

31. The Respondent was however able to contact the 5th Complainant, and use her personal details; that is her official telephone number to send her an apology via text message. The 5th Complainant is neither a client of the Respondent nor a loanee, yet the Respondent acknowledges that it had access to her number without providing a proper justification under the Act on how and why the same was collected and why it was stored.
32. In support of the above paragraph, the Respondent further states that it has attempted to reach out to the 6th Complainant to issue an apology but its attempts have been futile.
33. In consideration of all the facts of the complains, the responses and the evidence tendered, the Office finds that the Respondent irregularly collects, processes and stored personal data without notifying data subjects contrast with the Act.
34. The Respondent has also not presented or submitted any form of legal basis or legitimate and lawful reason that it relies upon to collect, process and store third parties' personal data who have not consented to their data being collected nor processed.
35. In view of the foregoing, the Office finds that the Respondent is in breach of Sections 26, 28 and 29 of the Act.

II. WHETHER THERE WAS ANY INFRINGEMENT OF THE COMPLAINANTS' RIGHTS AS DATA SUBJECTS AS PROVIDED FOR IN THE ACT

36. Section 26 of the Data Protection Act provides for the rights of a data subject which 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.*

37. The Respondent *vide* its own actions and/or that of its agents directly collected personal data of the Complainants who are not its clients, and proceeded to process the same without their consent, legitimate and lawful basis or legal obligation.

38. Lastly, as a data controller and processor, the Respondent should only collect personal data directly from the data subject as per section 28 of the Act unless the data subject has consented to the collection of their data from another source. The Respondent, by failing to notify the Complainants of the collection of their personal data, the method of collection and the use to which their personal data was to be put, at the point of collection prior to processing of the Complainant's personal data, violated the Complainants' right to privacy.

39. In view of the foregoing, the Office finds that the Respondent's evidence in support of its statement of response did not address the issues in contention. The Respondent's statement does not give legitimate reason on how the Complainants' data was collected, onboarded and processed and why the same was processed in contrast with the Act. The Respondent's actions occasioned infringement on the Complainants' rights as data subjects.

40. In view of the foregoing, the Office finds that the Respondent infringed on the rights of the Complainant as a data subject as provided for in the Act.

III. WHETHER THE COMPLAINANTS ARE ENTITLED TO ANY REMEDIES UNDER THE ACT

41. Section 3(e) provides that the object and purpose of this Act is to provide data subjects with rights and remedies to protect their personal data from processing that is not in accordance with this Act.

42. Regulation 14(1) of the Enforcement Regulations provides; that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations. Sub-regulation 2(d) provides; a determination under sub-regulation (1) shall be in writing and shall state the remedy to which the complainant is entitled.
43. Regulation 14(3) of the Enforcement Regulations provides; that the remedies contemplated under sub-regulation (2)(d) may include –
- a. issuance of an enforcement notice to the Respondent in accordance with the Act and Regulations
 - b. issuance of a penalty notice imposing an administrative fine where a respondent fails to comply with the enforcement notice
 - c. dismissal of the complaint where it lacks merit
 - d. recommendation for prosecution; or
 - e. an order for compensation to the data subject by the respondent.
44. The Complainants made the following requests on the remedies they wish be granted by the Office:
- i. The first Complainant requested the Office to force the Respondent to stop contacting him and harassing him over unknown persons unrepaid loans
 - ii. The second complainant requested that the Office mandates the Respondent to stop contacting persons who do not owe any loans to it.
 - iii. The third Complainant requested that the office restrains the Respondent from collecting, processing and storing data of persons with whom they have no contractual obligation with and persons who have not consented to the collection and processing of their data.
 - iv. The fourth Complainant requested the Office to restrain the Respondent from contacting him since he is neither a client nor a loanee of the Respondent.
 - v. The fifth Complainant requested the Office to mandate the Respondent to adhere to the data protection laws and regulations. To estoppe the

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Respondent from collecting third parties' personal data and engaging them in obligations which they hadn't subscribed to.

- vi. The sixth Complainant requested the Office to intervene on the practice of the Respondent, to ensure that they uphold the duty of confidentiality and integrity while handling personal data. She stated that the Respondent called her and disclosed personal information about her employees who are loanees of the Respondent and the same goes against the Act.

45. In consideration of all the facts of the complaints, the evidence tendered and the investigations conducted, the Office finds that the best suited remedy is issuance of an Enforcement Notice in the circumstances. Therefore, an Enforcement Notice is granted to remedy the infringements under the Act.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. An Enforcement Notice to hereby be issued to the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within 30 days.

DATED at **NAIROBI** this 15th day of December 2023.



Immaculate Kassait, MBS
DATA COMMISSIONER

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1. The first section discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for the effective management of the organization's resources and for ensuring compliance with applicable laws and regulations.

2. The second section outlines the various methods used to collect and analyze data. This includes the use of surveys, interviews, focus groups, and other qualitative and quantitative research techniques. The goal is to gather comprehensive information that can be used to identify trends, assess risks, and develop strategic initiatives.

3. The third section focuses on the analysis and interpretation of the collected data. It describes the process of identifying key findings, drawing conclusions, and presenting the results in a clear and concise manner. This section also highlights the importance of communicating the findings to the relevant stakeholders and using the information to inform decision-making.

4. The fourth section discusses the implementation of the findings and the development of action plans. It emphasizes the need for a clear and measurable plan of action, with specific responsibilities assigned to individuals or teams. Regular monitoring and evaluation are also discussed to ensure that the plan is being followed and that the desired outcomes are being achieved.

5. The fifth section provides a summary of the key points discussed in the report. It reiterates the importance of maintaining accurate records, the need for thorough data collection and analysis, and the importance of implementing the findings and monitoring progress. The report concludes by expressing confidence in the organization's ability to successfully manage its resources and achieve its goals.

Approved: _____
Date: _____
Signature: _____
Name: _____
Title: _____