



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 362 OF 2024

DENIS MWANGI ALIAS DENNIS MINT.....COMPLAINANT

-VERSUS-

MULLA PRIDE LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Section 8(1)(f) and 56 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaint Handling Procedure and Enforcement) Regulations, 2021)

A. INTRODUCTION

1. The Office received a complaint on 2nd March 2024 from the Complainant. The complaint relates to the alleged contacting of the Complainant by the Respondent regarding a loan that he was not party to.

B. LEGAL BASIS

2. Article 31(c) and (d) of the Constitution of Kenya 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.
3. The Office of the Data Protection Commissioner (hereinafter as 'this Office' and/or '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(1)(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.
5. This determination is premised on the provisions of Regulation 14 of the Data Protection (Complaint Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as 'the Enforcement Regulations') which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

C. BACKGROUND OF THE COMPLAINT

6. This Office received a complaint from the Complainant on 2nd March 2024. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 22nd March 2024 and referenced ODPC/CONF/1/5 VOL 1 (882). In the notification of the complaint, the Respondent was informed that if the allegations by the Complainant were true, it was in violation of various provisions of the Act. Further, the Respondent was asked to provide this Office with the following:
 - a. A response to the allegations made against it by the Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. Confirmation of whether the mobile phone numbers that contacted the Complainant belong to it or its agents;
 - d. The legal basis relied upon to process and engage with the Complainant's personal data;

- e. A detailed description of how it fulfills the rights of a data subject;
 - f. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint does not take place again; and
 - g. Any other relevant information it wishes the Office to consider.
8. The Respondent filed its response to the complaint *via* a letter dated 8th April 2024.
9. This determination is therefore as a result of analysis of the complaint as received, the response by the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The complaint relates to the alleged contacting of the Complainant by the Respondent regarding a loan that he was not a party to.

E. SUMMARY OF EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant stated that RhinoCash and Mula Loan App were sending him messages that he is an emergency contact to 0798****95 yet he wasn't. The Complainant provided screenshots of the said messages as proof.
12. The Complainant further stated that the Respondent was using mobile phone numbers 0702****85, 0718****62, 0111*****39, 0746****63, 0745****04 and 0110****80 to call and abuse him.
13. In addition, the Complainant stated that his contact was being used illegally to shame people.

ii. THE RESPONDENT'S RESPONSE

14. The Respondent stated that it was not the owner of Rhinocash and/or Mula Loan Apps as alleged by the Complainant.
15. Further, the named person W***** S**** of phone number 0798****95 is not their customer.
16. The Respondent stated that it conducted further investigations on the numbers provided to ascertain whether or not they belong to its agents. Its findings revealed

that the said numbers do not belong to any of its agents, but they could be owned by White Path Limited. The Respondent did not provide any evidence to prove that the said mobile numbers belonged to White Path Limited as alleged.

17. The Respondent requested this Office to carry out further investigations into the complaint.

18. In conclusion, the Respondent stated it is in the process of shutting down its operations.

F. INVESTIGATIONS UNDERTAKEN

19. The Office scheduled a site visit at the Respondent's premises on 3rd May 2024 to carry out further investigations into the matter.

20. On 1st May 2024, the Respondent wrote to this Office indicating that its Offices are closed and therefore the scheduled site visit will not proceed as planned.

21. On 3rd May 2024, investigation officers from the Office visited the Respondent's Offices located at Top Plaza, Kindaruma Road at 10.00 am, to conduct further investigations into the matter and ascertain whether their offices were closed as alleged in their email dated 1st May 2024.

22. Investigation Officers visited their Offices and found them locked. Upon inquiry from the security guards manning the building, investigation officers found out that the Respondent was still in operation and had only closed for the day. Investigation officers were further informed that the Respondent's employees reported to work on the material day of the site visit and were all sent away by 8.30am. This indicates a choreographed move to intentionally derail the investigations.

23. This act of deliberately obstructing investigations amounts to obstruction of the Data Commissioner contrary to Section 61 of the Act.

24. The Office notes that the Respondent is a repeat offender, having obstructed investigations into a similar complaint; ODPC Complaint No. 135 of 2024 - Austin Opalla vs Mulla Pride Limited.

G. ISSUES FOR DETERMINATION

25. In light of the above, the following issues fall for determination by this Office:

- i. Whether the mobile phone numbers that contacted the Complainant belong to the Respondent; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE MOBILE PHONE NUMBERS THAT CONTACTED THE COMPLAINANT BELONG TO THE RESPONDENT

26. The Complainant produced screenshots of messages sent to him using mobile phone numbers 0745****04, 0702****85 and 0718****62, allegedly belonging to the Respondent. The Complainant did not adduce any evidence to prove that the said mobile phone numbers belonged to the Respondent.

27. Investigation Officers from the Office were obstructed by the Respondent in conducting investigations into the complaint, and were unable to interrogate its database to ascertain whether the said mobile numbers belonged to it.

28. In the absence of any evidence implicating the Respondent, this Office finds that the mobile phone numbers that contacted the Complainant did not belong to the Respondent.

II. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.

29. Pursuant to Regulation 14(2) of the Enforcement Regulations, a determination shall state the remedy to which a Complainant is entitled. Further, the remedies are provided for in Regulation 14(3) of the Enforcement Regulations.

30. Section 61(a) & (b) of the Act provides for the offence of obstruction of the Data Commissioner and states that, "*a person who, in relation to the exercise of a power conferred by Section 9 – obstructs or impedes the Data Commissioner in the exercise of her powers; fails to provide assistance or information requested by the*

Data Commissioner; commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both."

31. The Respondent by derailing investigations into the complaint obstructed the Data Commissioner in the exercise of her powers. It is worth noting that the Respondent in its response to the Complaint filed against it *via* a letter dated 8th April 2024, requested the Office to carry out further investigations into the matter. It is also worth noting that the Respondent is a repeat offender, having deliberately obstructed investigations into a similar complaint lodged with the Office.

32. From the above, a recommendation for prosecution is hereby made to the Director(s) of the Respondent's Company, for obstruction of the Data Commissioner contrary to Section 61 of the Act.

33. In conclusion and having found that the mobile phone numbers that contacted the Complainant did not belong to the Respondent, the Office hereby dismisses the Complaint.

H. FINAL DETERMINATION

34. The Data Commissioner therefore makes the following final determination;

- i. The Complaint is hereby dismissed.
- ii. A recommendation for prosecution is hereby made against the Director(s) of the Respondent's Company for obstruction of the Data Commissioner contrary to Section 61 of the Act.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 30th day of May 2024.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER