

The National Data Protection Moot Court Competition

HYPOTHETICAL CASE

PATRICK OSOGO VERSUS REPUBLIC OF KENYA & KENYA JUDICIARY DATA SYSTEMS AUTHORITY (KJDSA)

BACKGROUND

The Government of Kenya (GoK) is implementing its digital transformation agenda in accordance with the Digital Master Plan 2022–2032, and the Bottom-Up Economic Transformation Agenda (BETA). According to the Digital Master Plan (2022-2032), the country seeks to enhance government service delivery to citizens by digitalizing approximately 80% of government services.

To this end, several agencies have developed digital systems designed to streamline operations and integrate data across government departments. Among these are the National Biometric Identification System (NBIS) and the Kenya Recidivism Assessment Tool (KRAT), both of which have become the subject of public scrutiny and legal challenge.

In 2023, the Ministry of Interior and National Administration launched the National Biometric Identification System (NBIS), a centralized database intended to serve as a single source of truth for the identification and verification of Kenyan citizens and residents. The system captures and stores biometric and personal data, including fingerprints, iris scans, facial recognition data, geolocation information, and other identifiers.

The Ministry justified the project on the grounds that NBIS would enhance national security, reduce fraud, and facilitate digital access to essential public services. However, civil society organizations challenged the rollout of NBIS in the High Court, arguing that it violated citizens' rights to privacy and data protection under Articles 31 and 35 of the Constitution of Kenya, 2010 as well as the Data Protection Act, 2019 and the Data Protection (General) Regulations, 2021, respectively.

The Court subsequently held that:

- a. The rollout of NBIS without a Data Protection Impact Assessment (DPIA) contravened Section 31 of the Data Protection Act, 2019, and was therefore unlawful and ultra vires.
- b. An order of mandamus was issued compelling the government to conduct a DPIA before any further processing or deployment of the NBIS.
- c. Despite this judgment, the Ministry continued to maintain the database for "essential public interest functions," pending completion of the DPIA.

In the same vein, as part of the Judiciary's digital reforms under the Kenya Judiciary Data Systems Authority (KJDSA), the Kenya Recidivism Assessment Tool (KRAT) was developed in 2024. KRAT is an algorithmic risk assessment system designed to assist judicial officers in making bail and sentencing decisions by predicting an accused person's likelihood of reoffending.

KRAT uses a range of personal and socio-economic variables, including prior convictions, level of education, employment history, housing stability, and neighbourhood crime rates. For data integration purposes, the tool accesses individual records through interoperable government databases, including NBIS.

However, KRAT's internal logic and weighting criteria remain undisclosed to defendants and the public, raising concerns about algorithmic transparency, accountability, and due process.



FACTS OF THE CASE

Patrick Osogo, a 28-year-old resident of Kisumu County, was arrested and charged with burglary involving goods valued at Kshs. 15,000. Like other Kenyan citizens, Patrick had been required to register under the National Biometric Identification System (NBIS), where he provided sensitive biometric data without being informed of the purposes for which it would be used, or how it would be stored and shared.

During his trial, the Kenya Recidivism Assessment Tool (KRAT) classified Patrick as a “High Risk” offender, citing his previous petty theft conviction, unemployment, unstable housing, and residence in a high-crime neighborhood. The Tool used data derived from the NBIS database in line with the Government’s Interoperability Framework.

Relying substantially on this assessment, the court:

- Denied his bail application
- Upon conclusion of his trial, imposed a five-year custodial sentence, exceeding the statutory minimum

Patrick has now appealed against the decision of the Lower Court to the High Court, arguing that KRAT’s reliance on socio-economic factors discriminates against the poor and perpetuates systemic bias. Further, the failure to be accorded an opportunity to challenge the outcome of the algorithm and request intervention of the Trial Magistrate breached his rights.

RELIEFS SOUGHT

Patrick Osogo is seeking the following prayers:

- a. A Declaration that the collection, storage, and use of the Petitioner’s personal and biometric data under the National Biometric Identification System (NBIS), without a duly conducted and published Data Protection Impact Assessment (DPIA), contravenes Article 31 of the Constitution of Kenya, 2010, and Sections 25, 31, and 41 of the Data Protection Act, 2019.
- b. A Declaration that the use of data derived from the NBIS database in the operation of the KRAT without the Petitioner’s knowledge or consent amounts to unlawful data processing and infringes upon the Petitioner’s right to privacy.
- c. A Declaration that the sole reliance by the trial court on the KRAT algorithmic assessment, whose internal logic and methodology remain undisclosed, violated the Petitioner’s right to a fair trial, due process, and equality before the law, contrary to Articles 27 and 50 of the Constitution.
- d. A Declaration that the interlinkage of KRAT with NBIS and the subsequent use of biometric and socio-economic data for judicial decision-making without transparency, accountability, or human oversight violates the principles of human dignity and fair administrative action guaranteed under Articles 28 and 47 of the Constitution.
- e. A Declaration that the Respondents’ continued reliance on data from NBIS for algorithmic processing and interoperability purposes, despite a prior court order requiring a DPIA, constitutes contempt of court and ultra vires action.
- f. An Order of Certiorari to bring into this Honourable Court and quash all decisions and actions that relied on or were informed by the KRAT in determining the Petitioner’s bail or sentencing outcome.
- g. An Order for Compensation or such appropriate relief in damages as this Honourable Court may deem just and equitable for the violation of the Petitioner’s constitutional rights.

GUIDANCE ON POSITIONING

- Participating teams are required to submit both applicant and respondent Memorials.



Violations such as plagiarism, disruptive conduct, or rule-breaking may result in disqualification, and the Organizing Committee reserves the right to impose additional sanctions including deduction of marks, forfeiture of awards, or removal from the Competition where conduct compromises fairness, integrity, or the spirit of professionalism.

FOR MORE INFORMATION:

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