



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1272 OF 2025

ALEXANDRA AMONDI ELEKIA.....COMPLAINANT

-VERSUS-

ALICE CYNTHIA OCHIENG T/A URBANSWIM.KE.....RESPONDENT

DETERMINATION

(Pursuant to Section 8 (1) (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 the Complainant with the allegation that despite the Complainant revoking and or withdrawing her consent, the Respondent continued to use her images for promotional purposes and commercial gain.

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 '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 (Complaints Handling Procedure and Enforcement) Regulations, 2021 (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 29th August 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the complaint filed against her *vide* letter dated 15th September 2025. The notification letter was referenced ODPC/CIE/CON/2/1 (650). The Office in the said Notification of Complaint for the complaints requested the Respondent to furnish the Office with –
 - a) A response to the allegations made against her by the Complainant;
 - b) A contact person who can provide further details as regards the complaint;
 - c) Any relevant materials or evidence in support of its response above;
 - d) The lawful basis relied upon to continue processing the Complainant's images after she had asked for deletion;
 - e) An elaborate representation of how data subjects can exercise their rights in relation to data protection;
 - f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and the mitigation

measures adopted or being adopted to ensure that such occurrences mentioned in the complaint do not take place again, if any

g) Any other information it wished the Office to consider.

8. In the interest of fair justice, and pursuant to Regulation 11 of the Data Protection (Complaints Handling Procedures and Enforcement) Regulations, 2021, the Office further informed the Respondent of the options of -

- Reviewing the complaint and summarily resolving the same to the satisfaction of the Complainant, or
- Resolving the complaint through mediation, negotiation and/or conciliation, as the alternative dispute resolution (ADR) mechanisms provided for by the Act and the Regulations.

9. The Respondent responded to the notification letter vide a letter dated 7th October 2025.

D. NATURE OF THE COMPLAINT

10. The Complaint concerns the Complainant's allegations that the Respondent continued using her images for promotional and commercial gain despite the Complainant withdrawing her consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant stated that on or about 6th May 2024, the Respondent engaged her in a contractual business relationship which entailed modelling for the Respondent's business, urbanswim.ke. various swimwear outfits, which she would later post on her business pages' various social media handles for promotional and or advertisement purposes.

12. Pursuant to the agreement by the parties, the Respondent started posting the Complainant's images in her social media accounts for promotional and/or advertisement purposes.

13. Sometime in September 2024, after the Respondent continuously posted images of the Complainant that she was not comfortable for them to be posted by the

Respondent, the Complainant communicated to the Respondent her withdrawal of consent to the use of her images by the Respondent.

14. Despite making it unequivocally clear that she no longer wants her images to be used by the Respondent for promotional and or advertisement purposes, the Respondent has adamantly refused to cease posting her images for her financial benefit.

15. To support her Complainant, the Complainant adduced:-

- i. A letter addressed to the Respondent expressing her consent withdrawal.
- ii. The impugned images.
- iii. Correspondence between the two parties with respect to this matter.

ii. THE RESPONDENT'S RESPONSE

16. The Respondent stated that the Complainant was engaged to offer a paid service during which photos and videos were captured using the Respondent's devices. She emphasized that the materials were produced and owned by the business as part of its marketing content.

17. The Respondent explained that the Complainant was aware that the photos and videos were taken for advertising purposes and were used lawfully to promote her business's products and services across various platforms.

18. The Respondent maintained that the Complainant's demand to delete the photos and videos amounted to a breach of contract and would significantly harm the business, given the financial investment made in marketing campaigns.

19. The Respondent noted that her marketing efforts had led potential clients to save and share the complainant's images on social media for future reference. She argued that the removal of these materials would render them inaccessible to potential customers, causing financial loss and disrupting ongoing campaigns.

20. The Respondent stated that she had lawful authorization to continue using the materials based on the original agreement and that the Complainant's request was inconsistent with the contractual terms.

21. The Respondent reiterated that the complainant had been compensated for her services and that the marketing content formed part of the agreed deliverables.

22. The Respondent concluded that while she respects privacy principles, she viewed the complainant's demand as unjustified. She therefore declined to comply with the deletion request.

H. ISSUES FOR DETERMINATION

23. It is uncontested that from the outset, the Complainant had given her consent to the use of her images for promotional and or commercial purposes in the Respondent's social media platforms.

24. It is also uncontested that in as inasmuch as the Complainant consented to the use of her images for promotional and or commercial purposes in the Respondent's social media platforms, she revoked and or withdrew the said consent afterwards.

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

- i. Whether there was a violation of the Complainant's rights under the Act; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

26. It was the Complainant's position that in as much as she gave the Respondent her consent to use her image for advertisement and promotional purposes, the consent given was not for perpetuity. She contended that when she withdrew her consent and asked the Respondent to delete and or pull down the already posted images on the Respondent's platform, the Respondent ought to have obliged. To her, the Respondent's refusal to delete the images amounted to a violation of her rights.

27. It was the Respondent's position that it had spent a lot of money in marketing the impugned images for promotional and commercial purposes. To the Respondent, the Complainant's demand to delete the photos and videos did not make economic

sense as it would significantly harm the business, given the financial investment in the marketing campaigns that featured the impugned images. To the Respondent, despite the Complainant's withdrawal of consent, she had lawful authorisation to continue using the materials under the original agreement.

28. Section 30 (1) (a) of the Act provides that a data controller or data processor shall not process personal data unless the data subject consents to the processing for one or more specified purposes. Section 32 (2) of the Act as read with Regulation 4(iii) of the Data Protection (General) Regulations, 2021 provides for the right to withdraw consent.
29. Further, Section 26 (c) & 26 (e) of the Act provides for the right to object to the processing of all or part of one's personal data and the right to deletion of false or misleading data, respectively.
30. Section 40 (1)(b) of the Act also provides for the right of rectification and erasure and states that a data subject may request a data controller or processor to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully.
31. Further to the above, Regulation 12 (3) of the General Regulations provides that a data controller or data processor shall respond to a request for erasure within fourteen days of the request.
32. From the evidence adduced and also from the Respondent's response, it is clear that despite the Complainant's withdrawal of consent and the request for erasure and deletion, the Respondent continued using the Complainant's images for marketing and promotional purposes. This continued use of the Complainant's images amounted to a violation of the Complainant's right to deletion and erasure.
33. This Office therefore finds and determines that as far as issue no **(i)** is concerned, the Respondent violated the Complainant's rights as envisaged under the Act.

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

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

35. Having considered the merits of the Complaint, the evidence adduced by the Complainant and the Respondent, it therefore follows that there has been a violation of the Act by the Respondent to that extent.

36. Section 65 (1) of the Act provides for compensation to a data subject and states that a person who suffers damage by reason of a contravention of a requirement of the Act is entitled to compensation for that damage from the data controller. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.

37. Regulation 14 (3) (e) of the Enforcement Regulations further provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

38. The Complainant claimed compensation as a remedy against the Respondent. In its Response to this prayer, the Respondent termed this as an attempt at extortion of the business and unjust enrichment.

39. Having found that the Complainant received compensation for her the use of her personal data from the Respondent, the Office declines to issue the remedy of compensation.

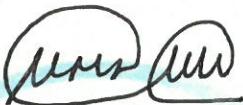
I. FINAL DETERMINATION

40. In the ultimate, the Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable.

- ii. The Respondent is hereby ordered to delete the advertisements containing the Complainant's personal data from all its online platforms and provide proof thereof to this Office within fourteen (14) days from the date of this determination.
- iii. Failure to adhere to (ii) above, an Enforcement Notice shall hereby be issued.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 8th day of December 2025.


IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

