



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1296 OF 2025

DANIEL OCHIENG NGOCHE.....COMPLAINANT

-VERSUS-

BUSCAR EAST AFRICA LIMITED.....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 on 3<sup>rd</sup> September 2025 alleging that the Respondent included and used his contact information in its website without the Complainant's knowledge and authorization.

#### **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 3<sup>rd</sup> September 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 it. The notification of complaint to the Respondent was issued on 26<sup>th</sup> September 2025 vide letter referenced **ODPC/CIE/CON/2/1 (697)**.
8. In the notification of the complaint, the Respondent was among other things asked to provide this Office with the following:
  - a) A response to the allegations made against it by the Complainant and a contact person who can provide further details regarding the complaint.
  - b) Provide any relevant materials or evidence in support of the response.
  - c) How the Respondent obtained the Complainant's personal data.
  - d) Whether the Complainant was notified and consented to the use of his personal data;
  - e) The lawful basis relied upon to process the Complainant's personal data.
  - f) Provide any relevant materials or evidence in support of the response.

- g) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrences mentioned in the complaint do not take place again.
- h) Any other information that it may wish the Office to consider.
9. As at the date of this determination, the Respondent failed, refused, or neglected to respond to the Notification of Complaint.
10. This determination is therefore pursuant to Regulation 11(2) of the Enforcement Regulations which provides that where a Respondent does not take any action as contemplated in law, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and these Regulations.

#### **D. NATURE OF THE COMPLAINT**

11. The Complaint concerns the complainant's allegations that the Respondent included and used his contact information in its website without the complainant's knowledge and or authorization.

#### **E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

##### **i. THE COMPLAINANT'S CASE**

12. The Complainant stated that the Respondent had unlawfully and without any form of authorization used his personal mobile phone number on the Respondent's website as the contact person for their Kisumu office. He indicated that he had never been an employee or an agent of the Respondent, yet his number appeared as the official contact for the Respondent's services. He explained that, as a result, he had been receiving calls from the Respondent's customers who were attempting to book services, which had caused him significant distress.

13. He further reported that he had continued to receive both calls and messages from these customers, which had interfered with his private and business life and had become a major nuisance. He added that the Respondent's website misrepresented him to the public as their employee or agent, which had negatively impacted his personal and business affairs.

14. He added that his representative had issued a demand letter dated 3<sup>rd</sup> June 2025 requesting the Respondent to take down the number, but the Respondent had declined to comply. He also reported that further attempts to engage the Respondent had been unsuccessful, as they continued to deny any knowledge of using his phone number.

15. To support his Complaint the Complainant adduced:-

- a) A copy of the contents of the webpage.
- b) Screenshots showing the multiple messages and calls received from the Respondents' customers.

## ii. THE RESPONDENT'S RESPONSE

16. The Respondent was non-responsive and did not respond to the Notification of Complaint filed against it. Therefore, the allegations levelled against it remain uncontroverted.

## F. ISSUES FOR DETERMINATION

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

- i. Whether the Complainant's personal data was lawfully processed; and
- ii. Whether the Complainant is entitled to any remedies under the Act.

## I. WHETHER THE COMPLAINANT'S PERSONAL DATA WAS LAWFULLY PROCESSED.

18. The Complainant alleged that the Respondent included and used his contact information in its website without his knowledge and or authorization. To the Complainant this unauthorized use of his personal information on the Respondent's website caused nuisance and disruption to his personal and professional life.

19. Section 2 of the Act defines processing as "*any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means such as:- (a) collection, recording, organization, structuring; (b) storage, adaptation or alteration; (c) retrieval, consultation or use; (d) disclosure*

*by transmission, dissemination, or otherwise making available; or (e) alignment or combination, restriction, erasure or destruction."*

20. From this definition, it is evident that at all material times, the Respondent was processing the Complainant's personal data.
21. 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.
22. The Act goes further to state the conditions of consent. It states as follows with regard to the conditions of consent:-

*32. Conditions of consent*

- (1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.*
- (2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.*
- (3) the withdrawal of consent under sub-section(2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.*
- (4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on the consent of the processing of personal data that is not necessary for the performance of that contract.*

23. From the evidence adduced to this Office, it is evident that at all material times the Respondent's website contained the Complainant's personal data. This use required the Complainants' knowledge and informed consent.
24. Despite being given an opportunity to respond to the Complaint, the Respondent did not file a response to the allegations brought by the Complainant. As stated above, the Respondent was duly notified of the complaint and was required to respond to the allegations against it within the prescribed timelines contained in the notification letter. As such, the Complainant's allegations remain

uncontroverted. The Respondent did not discharge its burden of proof as envisaged under Section 32 (1) of the Act.

25. This Office, therefore, finds that as far as issue no **(i)** is concerned, the Respondent processed the Complainant's personal data unlawfully.

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

26. 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.

27. As his relief, the Complainants sought that he be compensated. The Respondent did not make any representations concerning the Complainant's claim.

28. 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.

29. Having found that the Respondent processed the Complainant's personal data unlawfully, the Respondent is hereby directed to compensate the Complainant the amount of **KES 200,000/= (Two Hundred Thousand Shillings Only)**.

## **G. FINAL DETERMINATION**

30. 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 and or pull down the Respondent's personal data from all its website 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. The Respondent is hereby ordered to compensate the Complainant **KES 200,000 (Two Hundred Thousand Kenya Shillings Only).**
- v. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 8<sup>th</sup> day of December 2025.

  
**IMMACULATE KASSAIT, MBS**  
**DATA COMMISSIONER**



