



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1063 OF 2025

JOAN NJOKI KAMAU.....COMPLAINANT

-VERSUS-

NATIONAL BANK OF KENYA.....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 complaint concerns the allegation that the Respondent unlawfully disclosed the Complainant's confidential financial personal data to third parties without her consent.

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

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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 28th July, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant who was the 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 29th July 2025 referenced ODPC/CIE/CON/2/1(592). 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 them by the Complainant;
 - b) A contact person who can provide further details as regards to the complaint;
 - c) Provide any relevant materials or evidence in support of the response;
 - d) Evidence of whether the complainant consented to her personal data being shared to third party.

- e) Mitigation measures adopted or being adopted to address the dispute to the satisfaction of the Complainant and to ensure such occurrences do not recur.
 - f) Any other information that it may wish the Office to consider.
8. The Respondent responded to the notification letter.

D. NATURE OF THE COMPLAINT

9. The complaint concerns the allegation that the Respondent unlawfully disclosed the Complainant's financial data to third parties without her consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i) THE COMPLAINANT'S CASE

10. It was the Complainant's case that she was processing the sale of her property to an interested buyer and that she made payments towards the sale and wrote to the bank that she had completed the payments.
11. She stated that the Respondent responded to her, the buyer and the buyer's lawyers and attached her full loan statement and full bank statement.
12. The Complainant averred that the Respondent sent her confidential bank information to a 3rd party without her consent.
13. She posited that the Respondent tried to recall the email when they realized that they did wrong, but she had already opened the email.

ii) THE RESPONDENTS' CASE

14. It was the Respondent's case that the Complainant had taken up a mortgage with it and upon being unable to service her loan, the Complainant introduced other buyers of the property to the bank.

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15. The Respondent contended that sometime in October 2020, it extended a mortgage loan facility to the Complainant for the purchase of an apartment.
16. The Complainant could not repay the mortgage loan facility, and hence the file was forwarded to Credit Collection and Remedial Department after having been listed as non-performing. Due to the non-performance, the Respondent issued several demand letters to the Complainant to repay the facility.
17. During the recovery process, and after receipt of the second demand letter, the Complainant opted to sell the property through private treaty without the Bank's involvement, consent or knowledge to settle the outstanding loan balance. The Complainant subsequently introduced the buyers of the property to the bank, together with the proposal to sell the property.
18. The parties reached an arrangement that the monies recovered from the sale of the property to the other buyers be recouped by the Respondent to offset the mortgage facility that the Complainant had taken with the bank.
19. They stated that it was in the process of the transaction between the parties that the Respondent's employee, in her response to a correspondence between the parties and the lawyers involved in the transaction, shared the Complainant's mortgage- residential bank statement, as well as the Complainant's current account bank statement.
20. On realizing the sharing of the two bank statements with all the parties involved in the transaction, the Complainant complained, and the bank employee invited her to the office to apologize. According to the Respondent, its employee apologized and the matter stood closed.

F. ISSUES FOR DETERMINATION

21. It is undisputed that the Complainant had taken a mortgage facility with the Respondent and that the Complainant had failed to finance and or repay the mortgage facility in time despite the numerous demand letters sent to her. Upon her failure to

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repay the mortgage, the Complainant agreed to sell the property with the outstanding mortgage to another buyer and have the monies incurred in the transaction remitted to the bank to finance the defaulted mortgage facility.

22. It is also undisputed that the Respondent shared two different bank statements with the other buyers. These statements were the mortgage- residential bank statement, as well as the Complainant's current account bank statement.

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

- i. Whether the Complainant's personal data was processed in accordance with the principles of data protection; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

**I. WHETHER THE COMPLAINANT'S PERSONAL DATA WAS PROCESSED
IN ACCORDANCE WITH THE PRINCIPLES OF DATA PROTECTION.**

24. To contextualise this issue, the question that arises from all the above is whether it was necessary to share the Complainant's bank statements for both the mortgage-residential account and her current personal bank account.

25. Section 2 of the Act defines processing to mean *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, organisation, 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.*

26. The Respondent's actions of sending the two account statements to the buyers and legal representatives constituted processing.

27. Section 25 of the Act provides for the principles of data protection as follows: -

"Every data controller or data processor shall ensure that personal data is: -

- i) Processed in accordance with the right to privacy of the data subject;*
- ii) Processed lawfully, fairly, and in a transparent manner in relation to any data subject;*
- iii) Collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes;*
- iv) adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;*
- v) collected only where a valid explanation is provided whenever information relating to family or private affairs is required;*
- vi) accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay;*
- vii) kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and*
- viii) not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject. [emphasis supplied]*

28. Regulation 31 of the Data Protection (General) Regulations 2021 further expound on the elements for principle of purpose limitation as follows: -

31. Elements for principle of purpose limitation

The elements necessary to implement the principle of purpose limitation include-

- (a) Specifying the purpose for each processing of personal data;*
- (b) determining the legitimate purposes for the processing of personal data before designing organizational measures and safeguards;*
- (c) the purpose for the processing being the determinant for personal data collected;*

- (d) ensuring a new purpose is compatible with the original purpose for which the data was collected;*
- (e) regularly reviewing whether the processing is necessary for the purposes for which the data was collected and test the design against purpose limitation; and*
- (f) the use of technical measures, including hashing and cryptography, to limit the possibility of repurposing personal data.*

29. Regulation 33 of the Data Protection (General) Regulations, 2021 set out the elements for principle of data minimization as follows –

- (a) avoiding the processing of personal data altogether when this is possible for the relevant purpose;*
- (b) limiting the amount of personal data collected to what is necessary for the purpose;*
- (c) ability to demonstrate the relevance of the data to the processing in question;*
- (d) pseudonymising personal data as soon as the data is no longer necessary to have directly identifiable personal data, and storing identification keys separately;*
- (e) anonymizing or deleting personal data where the data is no longer necessary for the purpose;*
- (f) making data flows efficient to avoid the creation of more copies or entry points for data collection than is necessary; and*
- (g) the application of available and suitable technologies for data avoidance and minimization.*

30. The above provisions provide the guidelines within which the Respondent should apply in the processing of the personal data within its custody and control.

31. Related to the Complaint, this Office notes that the transaction between the Complainant, the Respondent, and the buyers introduced to the Respondent by the Complainant revolved around mortgage repayments and the offsetting of the same from the monies obtained from the sale of the same to the other buyers.

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32. In that event and in the spirit of full disclosure before the performance of any contract, the other buyers needed to know the status of the mortgage account only. As such, the Respondent had no reason to share the Complainant's personal current account with the buyers and their lawyers as well. The purpose of the sharing should have been limited to the mortgage transaction only and the Complainant's personal data shared ought to have been minimized to only what is necessary for that purpose.
33. To this end, this Office finds that the Respondent did not process the Complainant's personal data, being her personal current account, in accordance with the principles of data protection.

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. The Complainant sought for compensation.
35. 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.
36. Regulation 14 (3) (e) of the Enforcement Regulations provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

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

G. FINAL DETERMINATION

38. The Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two hundred thousand (KES. 200,000/=)** as compensation; and
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 24th day of October, 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

