



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1420 OF 2025

LEVI MARK BUSHURU..... COMPLAINANT

-VERSUS-

ZIZI AFRIQUE..... 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 Complainant lodged a complaint against the Respondent that the respondent failed to respond or act upon his data access and data erasure requests within the statutory timelines.

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.

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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 (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 24th September 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondents of the complaint filed against them *vide* a letter dated 23rd October 2025 and referenced ODPC/CIE/CON/2/1 (771). In the Notification of the Complaint, the Respondents were informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondents were asked to provide this Office with the following:
 - a. A response to the allegations made against them by the Complainant;
 - b. Any relevant materials or evidence in support of your response above
 - c. The legal basis relied upon to deny the Complainant the ability to exercise his data protection rights.
 - d. A demonstration (by way of written statement) of your level of compliance with the requirements under the Act and the Regulations. In particular, an elaborate representation of how a data subject can exercise their rights in relation to data protection;

- e. The mitigation measures adopted or being adopted to address the Complaint to the satisfaction of the Complainant
 - f. Any other relevant information they wish the Office to consider.
8. The Respondent was non-responsive and did not submit a response to the Notification of Complaint. Regulation 11(2) of the Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021 states that, *"where a respondent does not take any action as contemplated in the notification of complaint, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and the Enforcement Regulations."*
9. This determination is therefore as a result of analysis of the complaint as received and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The complaint stems from the alleged Respondent's failure to respond or act upon the Complainant's data access and data erasure requests within the statutory timelines.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant notes that on 13th September 2025, he submitted a data subject rights request under the Data Protection Act, 2019 and the Data Protection (General) Regulations, 2021 to the Respondent, specifically requesting access to all records relating to the completion of the recruitment exercise.
12. The Complainant avers that despite issuing the requisite notices, The Respondent has neither provided access to his personal data nor confirmed the deletion thereof.
13. The Complainant further submits that under Section 9(4) of the Act, a data subject access request is to be fulfilled within seven (7) days, and notwithstanding his extension of an additional three (3) working days, the Respondent has failed to comply, thereby contending that his rights under the Act have been infringed.

14. The Complainant prays for the following remedies:

1. That the data controller be compelled to comply with his request for access to his personal data;
2. That the data controller permanently deletes his personal data upon the conclusion of the recruitment process; and
3. Any other remedy that the Office deems just and appropriate under the circumstances.

ii. THE RESPONDENTS' RESPONSE

15. The Respondent was non-responsive and did not submit a response to the Notification of Complaint. Therefore, the allegations made in the Complaint remain undisputed.

F. ISSUES FOR DETERMINATION

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

- i. Whether the Respondent honored the Complainant's request for access to personal data.
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENT HONORED THE COMPLAINANT'S REQUEST FOR ACCESS TO PERSONAL DATA

17. Section 26(b) of the Data Protection Act, 2019 provides that a data subject has the right *"to access their personal data in the custody of a data controller or data processor."*

18. This right is further explained under Regulation 9 of the Data Protection (General) Regulations, 2021, which provides that a data subject has the right to obtain confirmation from the data controller or processor as to whether their personal data is being processed, and where that is the case, access to the personal data along with information on:

- (a) the purposes of processing;
- (b) the categories of personal data concerned;

- (c) the recipients or categories of recipients to whom the personal data has been or will be disclosed, including recipients in other countries;
- (d) the envisaged period for storage, or criteria to determine it; and
- (e) where the data was not collected from the data subject, the source of collection.

19. Regulation 9 further requires that, upon request, the data controller or processor shall provide access to the personal data, allow the data subject to examine it, or provide a copy of it, and that such requests must be complied with within seven (7) days as provided under Regulation 9(3) and (4) of the General Regulations.

20. In this case, the Complainant submitted a data subject access request on 13th September 2025, seeking access to his personal data relating to the recruitment exercise conducted by Respondent. Despite follow-up notices and the granting of an additional three (3) working days for compliance, the Respondent did not confirm whether it was processing the Complainant's personal data, nor did it provide access to the requested data. The Respondent also offered no explanation or lawful exemption under the Act.

21. The Office finds that the Respondent's failure to respond to the data subject access request within the statutory timeframe constitutes a denial of the Complainant's right of access under Section 26(b) of the Act.

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

20. Pursuant to 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.

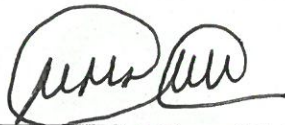
21. Having found that the Respondent failed to fulfill its obligations under the Act and the attendant Regulations, the Respondent is directed to grant access to the Complainant of the personal data requested within **Fourteen (14) days** or an **Enforcement Notice** shall issue against the Respondent pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

G. FINAL DETERMINATION

22. The Data Commissioner therefore makes the following final determination: -

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby directed to grant the data access request by the Complainant within **Fourteen(14) days** or an **Enforcement Notice** to issue.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 16th day of December 2025.



IMMACULATE KASSAIT, SC, MBS
DATA COMMISSIONER