



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC SUO MOTU INVESTIGATION NO. 014 OF 2025

ON

WEMA BUKEMBE DEVELOPMENT ORGANISATION.....RESPONDENT

(DETERMINATION ON THE SUO MOTU INVESTIGATION BY THE OFFICE OF THE DATA PROTECTION COMMISSIONER ON THE OPERATIONS OF WEMA BUKEMBE DEVELOPMENT ORGANISATION, BUNGOMA COUNTY)

DETERMINATION

(Pursuant to Section 8(1)(f), 9(1) (a), 56 and 57 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021)

A. INTRODUCTION

1. On 14th April 2025, the Office instituted a *suo motu* investigation, being, ODPC Suo Motu Investigation NO. ODPC/SM/014/2025, on its own initiative and taking cognizance of the public interest generated by the Respondent's personal data processing practices.

B. LEGAL BASIS

2. Article 31(c) and (d) of the Constitution of Kenya 2010 provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter 'this Office' 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

NT

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 9(1)(a) of the Act provides that the Office shall has the power to conduct investigations on its own initiative, or on the basis of a complaint made by a data subject or a third party.
5. This determination is premised on the provisions of Regulation 14 of the Data Protection (Complaint 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 INVESTIGATION

6. The Respondent is a non-governmental organization in Western Kenya that drives community development through a multifaceted approach that encompasses women and youth empowerment, education, and climate action.
7. Concerns relating to the processing and use of the collected data were brought to the attention of this Office. The concerns raised included unlawful processing of data subjects personal data including publication of minor's images on the Respondents' website <https://wemabdo.org/>
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the *suo moto* investigations *vide* a letter dated 14th April 2025 and referenced ODPC/CONF/1/5 VOL 1 (226). The notification letter was served upon the Respondent on 15th April 2025. In the notification, the Respondent was asked to provide this Office with the following:
 - a. A response to the alleged violations made against them
 - b. The lawful basis relied upon to process customers' data, i.e taking photos, including using them for commercial purposes;

- c. How the Respondent ensures compliance with duty to notify requirement;
 - d. Mechanisms put in place to ensure compliance with the data protection principles;
 - e. A contact person who can provide further details as regards the investigation;
 - f. Provide any relevant materials or evidence in support of their response;
 - g. The mitigation measures adopted or being adopted to address the alleged violations and to ensure that such occurrence mentioned in the complaint do not take place again.
9. The Respondent filed a response to the notification of suo moto investigation dated 23rd June 2025 and further additional information were shared via a letter dated 5th August 2025.
10. On 5th August 2025, the Office conducted a site visit at the Respondent's premises.
11. This determination is therefore as a result of an analysis of the preliminary investigation by the Office, the Respondent's response, and investigations conducted by the Office.

D. NATURE OF THE INVESTIGATION

12. The Office conducted a preliminary investigation on the publicly available information concerning potential violations of the Act by the Respondent. The Concerns revolved around inappropriate processing of personal data by the Respondent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

I. THE SUO MOTO INVESTIGATION

13. According to preliminary investigations by the Office, there was likelihood of non-compliance in the Respondent's processing operations, particularly on how the Respondent used, handled and stored personal data within their custody as a data

Handwritten signature/initials

controller. The alleged violations against the Respondent were communicated to the Respondent *vide* the notification referenced hereinbefore and included:-

- i) Unlawful processing of data subject's personal data including taking photos of customers without consent contrary to section 30 of the Act.
- ii) Failure to process personal data in a transparent manner and failure to fulfil the duty to notify contrary to sections 25(6) and 29 of the Act.
- iii) Failure to put in place mechanisms to allow data subjects exercise their rights contrary to section 26 of the Act.
- iv) Processing of personal data relating to customers contrary to the principles of data protection as set out in section 25 of the Act.
- v) The use of customers' personal data to advance commercial interest, contrary to section 37 of the Act.

II. THE RESPONDENT'S RESPONSE

14. The Respondent filed a response to the notification of suo moto investigation vide letter Ref: JW/DATA/IND/001/2025 dated 23rd June, 2025 and a subsequent submission dated 5th August 2025.

15. The Respondent submitted that;

- a) The organization is dully registered under the Non-Governmental Organizations Act with a staff establishment of three (3).
- b) The organization is directly engaged in the uplifting, betterment and empowering of the local community at Bukembe location in Bungoma County.
- c) The empowerment programmes include provision of clean water to the community, free education to children and empowerment of the girl child.
- d) The organization collects personal data from the data subjects during the member onboarding/ admission process upon which they are informed of the purpose of processing
- e) The organization does not engage in data transfer of personal data.
- f) Parents/ guardians of the children approach the organization seeking for aid in which process are informed of the fundraising/ donor scouting

process

F. They have had data protection sensitization session with the management

INVESTIGATIONS UNDERTAKEN

16. The Office conducted a site visit at the Respondent's premises on the 5th August 2025.

17. During the site visit, the Office interrogated the Respondent's modes of operations and systems to verify what it had submitted to this Office. The Office further analysed and validated the documentary evidence submitted by the Respondent.

18. Among others, it was established that:

- i. The Respondent is a dully registered data controller and has initiated the process of registering as a data processor in compliance with Section 18(1) of the Act as read together with Regulation 4(1) of the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021.
- ii. The Respondent being a Non-Governmental Organization dully registered in Kenya, operating various charitable activities in Bungoma county.
- iii. The Respondent runs a primary school through donations for the vulnerable children who ordinarily wouldn't afford school fees.
- iv. The Respondent processes a considerable size of personal data from the beneficiaries of its' empowerment programs including minors
- v. The Respondent runs and maintains an official website <https://wemabdo.org/> where they share the organizations activities including people's images.
- vi. The Respondent relies on protection of the vital interests of the data subject(s) as the lawful basis to publish images on it's website. The NGO deals with vulnerable individuals where immediate action may be needed to protect a child's wellbeing and also provide basic needs including education.
- vii. The Respondent does not process/ publish persons' images including minors on the website to advance commercial purposes since it's not a profit making entity but a charitable organization.

- viii. The Respondent demonstrate efforts and general willingness to comply with the Act and the attendant Regulations i.e. has a draft data protection policy.

G. ISSUES FOR DETERMINATION

19. In light of the above, the issue that falls for determination by this Office is whether the Respondent has complied with the Act and its attendant regulations.

I. WHETHER THE RESPONDENT HAD COMPLIED WITH THE ACT AND ITS ATTENDANT REGULATIONS.

20. Upon investigations, and considering our findings as noted in paragraphs 16 to 18 above has complied with Sections 25, 26, 29, 30, and Section 37 of the Act, as read together with Part V of the Data Protection (General) Regulations 2021 of the Act.

21. 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; adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;*
- iv) collected only where a valid explanation is provided whenever information relating to family or private affairs is required;*
- v) 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;*
- vi) kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and*
- vii) not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject.*

22. From this Office's investigations, it emerged that the Respondent has to a greater extent implemented the above principles of data protection.

23. Section 26 of the Act provides the rights of a data subject. It states:-

A data subject has a right –

- a) to be informed of the use to which their personal data is to be put;
- b) to access their personal data in custody of data controller or data processor;
- c) to object to the processing of all or part of their personal data;
- d) to correction of false or misleading data; and
- e) to deletion of false or misleading data about them.

24. From this Office's investigations, it emerged that the Respondent has to a greater extent, complied with section 26.

25. Section 29 of the Act provides for the Respondents duty to notify and provides that
" a data controller or data processor shall before collecting personal data, in so far as practicable, inform the data subject of:-

- a) the rights of data subject specified under section 26;
- b) the fact that personal data is being collected;
- c) the purpose for which the personal data is being collected;
- d) the third parties whose personal data has been or will be transferred to, including details of safeguards adopted;
- e) the contacts of the data controller or data processor and on whether any other entity may receive the collected personal data;
- f) a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data;
- g) the data being collected pursuant to any law and whether such collection is voluntary or mandatory; and
- h) the consequences if any, where the data subject fails to provide all or any part of the requested data."

26. From this Office's investigations, the Respondent demonstrated how it notified its clients and members of what they ought to be notified of before collection of their personal data as envisaged by Section 29 of the Act.

27. Section 30 of the Data Protection Act provides the lawful bases for processing personal data. It provides:-

30. Lawful processing of personal data

- (1) A data controller or data processor shall not process personal data, unless (a) the data subject consents to the processing for one or more specified purposes; or (b) the processing is necessary-
 - (i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering

- into a contract;*
- (ii) for compliance with any legal obligation to which the controller is subject;*
- (iii) in order to protect the vital interests of the data subject or another natural person;*
- (iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*
- (v) the performance of any task carried out by a public authority;*
- (vi) for the exercise, by any person in the public interest, of any other functions of a public nature;*
- (vii) for the legitimate interests pursued by the data controller or data processor by a third party to whom the data is disclosed, except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject; or*
- (viii) for the purpose of historical, statistical, journalistic, literature and art or scientific research.*

(2).....

28. From this office's investigations as noted earlier in paragraph 18 above, the Respondent had a lawful basis for processing the personal data in its custody.
29. Section 37 provides for commercial use of personal data. From our investigations, it emerged that the Respondent was not using the personal data in its custody for commercial use.
30. From the foregoing it is therefore our finding and determination that the Respondent is compliant with the Act and its attendant regulations to the extent stated above.

H. FINAL DETERMINATION

31. The Data Commissioner therefore makes the following final determination;
- i. The Respondent is not liable in respect of this *suo motu* investigation, and the file is closed forthwith.

- ii. The Respondent has 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



