



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC SUO MOTU INVESTIGATION NO. 003 OF 2025

ON

ZAD MUSLIM SCHOOL- MARSABIT.....RESPONDENT

(DETERMINATION ON THE SUO MOTU INVESTIGATION BY THE OFFICE OF THE DATA PROTECTION COMMISSIONER ON THE OPERATIONS OF ZAD MUSLIM SCHOOL, MARSABIT)

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 17th March 2025, the Office instituted a *suo motu* investigation, being ODPC Suo Motu Investigation NO. ODPC/SM/003/2025, 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

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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 9(1)(a) of the Act provides that the Office shall have 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. Zad Muslim School is a private primary school. The facility processes high volumes of personal data from the school going children who are minors.
7. Concerns relating to the processing and use of the collected minor's personal data have been brought to this Office's attention. The concerns raised included inappropriate use of the data collected including use of minors' photos on social platforms, violation of the data subjects' rights, unlawful data transfers and inappropriate processing of the data collected.
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the *suo moto* investigations vide a letter dated 17th March 2025 and referenced ODPC/CIE/CON/2/1 (157) and served upon the Respondent on 19th March 2025. In the notification, the Respondent was asked to provide this Office with the following:
 - a) A response to the alleged violations made against the school
 - b) The lawful basis relied upon to process minors' data for commercial purposes

- c) A contact person who can provide further details as regards the investigations;
- d) Any relevant materials or evidence in support of the response above;
- e) The mitigation measures adopted or being adopted to address the alleged violations and to prevent such reoccurrence.

9. On 29th April 2025, the Office conducted a site visit at the Respondent's premises.

10. On 30th April 2025, the Respondent responded to the notification letter.

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 use of the data collected including use of minors' photos on social platforms, violation of the data subjects' rights, unlawful data transfers and inappropriate processing of the data collected.

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

- i) Failure to process personal data in a transparent manner and failure to fulfil the duty to notify contrary to Sections 25(b) and 29 of the Act.
- ii) Processing of personal data relating to children contrary to the provisions of Section 33 of the Act.
- iii) The use of minors personal data to advance commercial interests

II. THE RESPONDENT'S RESPONSE

14. *Via* a letter dated 30th April 2025, the Respondent furnished the Office with its official response to the allegations.

15. In its submissions, the Respondent submitted that:

- a) The school has never posted any pictures or videos relating to children on any social media.
- b) That the allegation of the school having shared minors' photos on tiktok for commercial purposes was not true.
- c) The said tiktok account under the name "Zad Muslim School" was being run by one "Adam Adonai" whom the school had no association with.
- d) That there were no such images shared on its website.
- e) The school had initiated investigations into unmasking who Adam Adonai was.
- f) That the School maintains a website, Facebook account and YouTube account but none of the named platforms has photos for minors.

F. INVESTIGATIONS UNDERTAKEN

16. The Office conducted a site visit at the Respondent's premises on the 29th April 2025. The Office had a discussion with the leadership of the school which included their directors.

17. Among others, it was established that:

- i. The Respondent processes large volumes of personal data including sensitive personal data but is not a registered data handler contrary to Regulation 4(1) of the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021.
- ii. The Tiktok and YouTube accounts under the name of the school were sharing minors' photos and videos for different functions including class

sessions.

- iii. The Youtube account under the school's name was sharing images and videos of minors and one Ordofa the Director was running the account.
- iv. The school's website had since been pulled down while the Facebook account didn't have any personal data shared on it.
- v. The school did not demonstrate the lawful basis relied upon to share/process minors' photos and videos for commercial purposes contrary to Section 37 of the Act.
- vi. The Respondent committed to investigate and establish the identity of the person running the Tiktok account under its name, and also pull down the photos/videos on the Youtube account as a measure to address the violation.
- vii. The school did not demonstrate mitigation measures adopted or being adopted to prevent such reoccurrence.

G. ISSUES FOR DETERMINATION

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

- i. Whether the Respondent has complied with the Act and its attendant regulations.
- ii. Whether there are any remedies to issue with respect to the *suo moto* investigation.

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

19. It was the Respondent's position that it had never posted any pictures or videos relating to children on any social media. It also stated that it had never used the minor's photos for commercial purposes.

20. Upon investigations, and considering our findings as noted in paragraph 17 above, the Respondent has not complied with Sections 25, 29, and 37, as read together with regulation 14 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 violated the above principles of data protection. It has not implemented the above principles.

23. 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."*

24. From this Office's investigations, the Respondent could not demonstrate how it notified the students or their guardians of what they ought to be notified of before the collection of the students' personal data as envisaged by Section 29 of the Act.

25. Section 37 of the Data Protection Act provides for commercial use of data. It provides:-

37. Commercial use of data

(1) A person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person-

(a) has sought and obtained express consent from a data subject; or

(b) is authorized to do so under any written law and the data subject has been informed of such use when collecting the data from the data subject.

(2) A data controller or data processor that uses personal data for commercial purposes shall, where possible, anonymize the data in such a manner as to ensure that the data subject is no longer identifiable.

(3) The Cabinet Secretary, in consultation with the Data Commissioner may prescribe practice guidelines for commercial use of personal data in accordance with this Act.

26. Regulations 14 of the Data Protection (General) Regulations 2021 further provide for commercial use of personal data as follows:-

14. Interpretation of commercial purposes

(1) for the purposes of section 37 (1) of the Act, a data controller or processor shall be considered to use personal data for commercial purposes where personal data of a data subject is used to advance commercial or economic interests, including inducing another person to buy, rent, lease, join, subscribe to, provide or exchange products, property, information or services, or enabling or effecting, directly or indirectly, a commercial transaction. [Emphasis ours]

27. From a collective reading of the above legal provisions, it is discernible that any form of influencing and/or advancing a commercial transaction, whether directly or indirectly, using personal data, amounts to the commercial use of personal data.

28. The commercial use of personal data obtained by the data controller must be by consent from the data subject.

29. By posting the minors' photographs in the Respondent's school attire on their social media platforms, the Respondent was advancing its commercial interests by inducing the members of the public to join their institution.

30. By inducing the members of the public in the way it did, the Respondent influenced commercial transactions both indirectly and directly.

31. As such, the actions of the Respondent amounted to internet marketing and commercialisation of the students' personal data, without the students' consent by themselves or by their guardians.

32. From the foregoing, it is therefore our finding and determination that the Respondent is not compliant with the Act and its attendant regulations to the extent stated above.

H. FINAL DETERMINATION

33. The Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable in respect of this *suo motu* investigation.
- ii. An Enforcement Notice be and is hereby issued to the Respondent.
- iii. 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