



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 2175 OF 2025

ANTONATE ROMBO AIKO.....COMPLAINANT

-VERSUS-

GOODTIMES AFRICA

T/A BLANKETS & WINE.....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 alleging that the Respondent continued to use her image for commercial purposes on their social media platform 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 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.

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 19th December 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 16th February 2026, and referenced ODPC/CIE/CON/2/1/VOL.2 (044). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondent was 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 this complaint,
 - c. any relevant materials or evidence in support of your response above,
 - d. The lawful basis relied upon to process the Complainant's personal data.

- e. The lawful basis relied upon to process the complainant's personal data
 - f. Evidence as to whether the Complainant consented to the use of her image on their social media pages
 - g. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant,
 - h. The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the Complaint do not take place, if any,
 - i. Any other information you wish the Office to consider
8. The Respondent submitted a Response to the Notification of Complaint Vide a letter dated 10th July 2025.
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 relates to the alleged unlawful processing of the Complainant's personal data, namely her image, through its continued use for commercial purposes on the Respondent's social media platforms without her consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant avers that the Respondent deprived her of control over her personal data by misrepresenting and falsely endorsing her through the use of her image in event promotions, specifically in advertisements for "Blankets and Wine Tumatane OnjaOnja Summer Events 2025." She asserts that this misrepresentation has harmed her reputation and professional image.
12. The Complainant further avers that the use of her image was undertaken without her consent and amounts to the unauthorised use of her likeness. She contends that her image holds commercial value, and its use for advertising purposes by the Respondent constitutes an inappropriate exploitation for the data controller's benefit, while potentially diminishing its value for future commercial engagements and denying her the opportunity to license it on fair terms.

13. She further submits that the unauthorised acquisition and use of her image amounts to a violation of her right to privacy under the Data Protection Act.

ii. THE RESPONDENTS' RESPONSE

14. The Respondent, through its advocates, Thuku, Njiru & Co. Advocates, responded to the Notification of Complaint dated 26th February 2026.

15. The Respondent maintained that the Complainant's consent was expressly obtained in accordance with the applicable data protection framework.

16. The Respondent further contended that any alleged infringement is not subsisting and, in any event, was never undertaken for any improper or extraneous commercial purpose beyond the scope expressly contemplated in the terms and conditions duly shared with attendees.

F. INVESTIGATION PROCESS

17. The investigation process entailed a review of available documentation including;

- i. The complaint documents/ form as lodged by the Complainants and the supporting evidence;
- ii. The Respondent's response.

18. The Respondent subsequently requested that the matter be referred to Alternative Dispute Resolution (ADR). However, the parties were unable to reach an amicable resolution.

G. ISSUES FOR DETERMINATION

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

- i. Whether the Respondent obtained express consent from the Complainant to process her data for commercial purposes.
- i. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENT OBTAINED EXPRESS CONSENT FROM THE COMPLAINANT TO PROCESS HER DATA FOR COMMERCIAL PURPOSES.

20. Section 37(1)(a) of the Act provides that a person shall not use personal data for commercial purposes unless such person has sought and obtained the express consent of the data subject.
21. Regulation 14(1) of the Data Protection (General) Regulations, 2021 provides that a data controller or data processor is considered to use personal data for commercial purposes where such data is used to advance commercial or economic interests, including inducing a person to buy, subscribe to, or otherwise obtain products, services, information, or enabling or effecting a commercial transaction, directly or indirectly.
22. Further, Regulation 14(2) provides that personal data is also deemed to be used for commercial purposes where it is applied in direct marketing, including sending promotional material or displaying advertisements on online platforms where a data subject is identifiable.
23. From the foregoing, it is evident that the determining factor is whether the personal data is used to promote, advertise, or facilitate a commercial transaction or economic benefit, whether directly or indirectly.
24. In the present case, the Complainant's image was used in promotional material for the "Blankets and Wine Tapatane Onja Onja Summer Events 2025," which was intended to attract attendance and participation in a paid or revenue-generating event.
25. Such use falls squarely within Regulation 14(1), as it was aimed at advancing the Respondent's commercial and economic interests by promoting the event and inducing public participation.
26. Accordingly, the Office finds that the Respondent used the Complainant's personal data for commercial purposes within the meaning of Section 37(1)(a) of the Act as read with Regulation 14 of the Data Protection (General) Regulations, 2021 and required express consent to process her personal data.
27. Section 2 of the Act defines consent as any manifestation of an express, unequivocal, free, specific, and informed indication of a data subject's wishes, by

a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject.

28. Section 30 of the Act provides that personal data may only be processed where a lawful basis exists, including where the data subject has given consent to the processing of their personal data for one or more specific purposes. Further, Section 32 places the burden on the data controller or processor to demonstrate that such consent was obtained, and requires that, in determining whether consent was freely given, regard be had to the circumstances under which it was obtained.

29. These provisions collectively establish that consent must not only be obtained, but must be purpose-specific, informed, and capable of proof by the data controller.

30. In the present case, the Respondent asserts that the Complainant's consent was obtained through terms and conditions shared with event attendees. However, the Respondent has not demonstrated that such consent specifically extended to the use of the Complainant's image for commercial advertising and promotional purposes.

31. Moreover, there is no evidence that the Complainant was adequately informed that her image would be used in promotional materials, or that she took any clear affirmative action indicating agreement to such use.

32. Accordingly, the Office finds that the Respondent did not obtain valid express consent from the Complainant for the processing of her personal data for commercial purposes, and the processing was therefore unlawful under Sections 30 and 32 of Act.

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

33. 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.

34. The Complainant requested this Office to issue an award of compensation. Section 65 of the Act provides 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. The Section indicates that damage includes financial loss and damage not involving financial loss including distress.
35. Further, 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.
36. In considering whether to issue compensation, this Office takes into account the Respondent's use of the Complainant's personal data for commercial purposes without obtaining the Complainant's express consent as required under the Data Protection Act. The Respondent is hereby ordered to pay the Complainant Kenya **Shillings Three Hundred Thousand (KES 300,000)** as compensation.

H. FINAL DETERMINATION

37. The Data Commissioner therefore makes the following final determination: -
- i. The Respondent is hereby found liable.
 - ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Three Thousand (KES 300,000)** as compensation.
 - iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 8th day of April **2026.**



IMMACULATE KASSAIT, SC, MBS
DATA COMMISSIONER