



## **OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 0213 OF 2026**

**PETER MACHARIA WAITHIRA .....COMPLAINANT**

**-VERSUS-**

**LOLC KENYA MICROFINANCE BANK LIMITED .....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 alleges that the Respondent published his personal data in public notices on their social media platforms without his prior 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

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 15<sup>th</sup> January, 2026. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from 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 16<sup>th</sup> March, 2026 referenced ODPC/CIE/CON/2/1 VOL. 2 (093). In the notification of the complaint, the Respondent was informed that if the Complainant's allegations were true, they would be in violation of various sections of the Act. Additionally, 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 could provide further details as regards this complaint;
  - c) Any relevant materials or evidence in support of their response above;
  - d) The lawful basis relied upon for processing and publishing the Complainant's personal data;

- e) Evidence as to whether the Complainant consented to the processing of his personal data;
  - f) An explanation for the purpose of publishing the public notices;
  - g) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, and to ensure that such occurrences mentioned in the complaint do not occur again;
  - h) Any other information you wish the Office to consider.
8. The Respondent did not respond 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 Complainant alleges that the Respondent published his personal data in public notices on their social media platforms without his prior consent.

#### **E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

##### **i. THE COMPLAINANTS' CASE**

11. The Complainant alleges that he used to be an employee of the Respondent on contract service, having served continuously and religiously with impeccable dedication.
12. The Complainant stated that on 28<sup>th</sup> July 2025 he formally tendered his resignation *vide* email to the Respondent which was received. Despite his resignation the Respondent proceeded to run highly sensitive public notices on their social media platforms claiming that the Complainant was not part of them and warned the public against any transactions with him.

13. The Complainant sought the following redress;

- i. An order of deletion of the posts;
- ii. Compensation

14. In support of his complaint, the Complainant attached as evidence –

- i. Screenshots of the Respondent's Facebook posts;
- ii. Screenshot of emails sent to the Respondent by the Complainant;

## **F. ISSUES FOR DETERMINATION**

15. It is undisputed that the Respondent posted the Complainant's images on their Facebook platform.

16. In light of the above, the complaint and evidence adduced together with the investigations conducted, the following issues fall for determination by this Office:

- i. Whether there was unlawful processing of data by the Respondent;
- ii. Whether the Complainant is entitled to remedies under the Act and attendant Regulations.

### **I. WHETHER THERE WAS UNLAWFUL PROCESSING OF DATA BY THE RESPONDENT.**

17. Section 25 (a) of the Act states that a data controller or processor shall ensure that personal data is processed in accordance with the right to privacy of the data subject. Further, Section 25 (b) requires every data controller or data processor to ensure that personal data is processed lawfully, fairly, and in a transparent manner in relation to the data subject.

18. Section 30 (1) of the Act states that a data controller or data processor shall not process personal data unless the data subject consents to the processing or for one or more specified purposes set out in Section 30 (1)(b) of the Act.

19. The Complainant maintains that he did not consent to the processing of his personal data. The Respondent did not respond to the Notification of Complaint and as such

did not provide the lawful basis he relied upon in processing the Complainant's personal data.

20. In light of the above, the Office finds that the Respondent unlawfully processed the Complainant's personal data.

## **II. WHETHER THE COMPLAINANT IS ENTITLED TO REMEDIES UNDER THE ACT.**

21. According 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.

22. Section 58 of the Act as read together with Regulations 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 further contemplates, as a remedy, issuance of an Enforcement Notice to the Respondent.

23. Having found that the Respondent did not demonstrate the lawful basis for processing the Complainant's personal data by failing to Respond to the Notification, the Respondent is hereby directed to erase the Complainant's images from their online media within 14 days hereof, failure to which **an Enforcement Notice to be issued against the Respondent.**

24. Further, Section 61(b) of the Act provides for the offence of obstruction of the Data Commissioner and states that, *"a person who, in relation to the exercise of a power conferred by Section 9 fails to provide assistance or information requested by the Data Commissioner; commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both."*

25. This Office issued a Notification of Complaint to the Respondents, requiring them to respond to the complaint in accordance with Regulation 11 of the Enforcement Regulations. The Respondent either negligently or intentionally failed to respond to the Notification of Complaint. By failing to respond to the Notification of complaint,

the Respondent obstructed the Data Commissioner in the exercise of her powers under Section 9, an offence as stated hereinbefore.

26. Therefore, a recommendation for prosecution is hereby made to the Director(s) of the Respondent's Company, for obstruction of the Data Commissioner contrary to Section 61(b) of the Act.

### **G. FINAL DETERMINATION**

27. In the ultimate, the Data Commissioner makes the following final determination;

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby directed to erase the Complainant's personal data from their online media within 14 days hereof, failure to which an Enforcement Notice to be issued against the Respondent.
- iii. A recommendation for prosecution is hereby made against the Director(s) of the Respondent's Company for obstruction of the Data Commissioner contrary to Section 61(b) of the Act.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 14<sup>th</sup> day of April 2026.



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**IMMACULATE KASSAIT, SC, MBS**  
**DATA COMMISSIONER**