



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 2036 OF 2025

ANDERSON WAITHAKA MAINA.....COMPLAINANT

-VERSUS-

PAYABLU CREDIT T/A TUMACASH

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 lodged a complaint against the Respondent alleging that the Respondent contacted him in relation to a loan he was not privy to.

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 10th 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 21st January, 2026 and referenced ODPC/CIE /CON/2/1(1058). 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. Provide any relevant materials or evidence in support of their response above;
 - c. Details on how they obtained the Complainant's personal data,
 - d. Whether the Complainant was notified and consented to the use of his personal data;
 - e. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any,

- f. Any other information you wish to 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 Complainant's allegation that Respondent allegedly contacted him in relation to a loan he was not privy to.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

I. THE COMPLAINANT'S CASE

11. The Complainant stated that he began receiving messages from the Respondent demanding repayment of a loan which he maintains he did not apply for or obtain. He asserted that the messages were sent to his mobile number 07#####.
12. The Complainant further stated that upon receiving the messages, he contacted the company through another number to dispute the claim and to inform them that he had not taken any loan from the company. However, despite raising the complaint, the messages demanding repayment allegedly continued to be sent to his number.
13. The Complainant therefore alleged that the Respondent unlawfully obtained and processed his personal data. He contends that the continued sending of the messages amounted to harassment and caused him embarrassment. Consequently, he requested that his personal information be deleted from the company's database and sought compensation for the distress allegedly caused by the messages and the rude response he received when he contacted the company.

II. THE RESPONDENT'S RESPONSE

14. The Respondents were 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

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

- i. Whether the Respondent fulfilled its obligations under the Acts and the attendant regulation.
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT AND THE ATTENDANT REGULATION.

16. Section 25(a) requires that personal data be processed lawfully, fairly and in a transparent manner.

17. In the present case, the Complainant stated that he began receiving loan repayment messages which he attributed to the Respondent. He further stated that he contacted the company to dispute the loan and informed them that he had not taken any loan from the Respondent. Despite raising the complaint, the messages allegedly continued to be sent to his phone number.

18. The Office notes that sending loan repayment messages necessarily involves the processing of personal data, including the use of a data subject's contact information for purposes of loan recovery. Where such processing occurs, a data controller is required to demonstrate that the processing is lawful and based on a legitimate basis.

19. However, the Respondent did not submit any response to the Notification of Complaint issued by this Office and did not provide any explanation or evidence demonstrating the lawfulness of the alleged processing of the Complainant's personal data.

20. In the absence of any justification from the Respondent, the Office is unable to establish that the processing of the Complainant's personal data was conducted in accordance with the principles set out under Section 25 of the Act. Consequently, the Respondent failed to demonstrate that the processing of the Complainant's personal data was lawful, fair and transparent.

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

21. 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.

22. The Office notes that the Respondent failed to discharge its obligation to demonstrate that the processing of the Complainant's personal data was conducted in accordance with the principles set out under Section 25(a) the Data Protection Act.

23. In this context, **an Enforcement Notice shall issue against the Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations for failure to respond to the Notification.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- i. An Enforcement notice to hereby be issued to the Respondent.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 11th day of March 2026



**IMMACULATE KASSAIT SC, MBS
DATA COMMISSIONER**