



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 2118 OF 2026

GRACE ELLAH INDOSHI1ST COMPLAINANT
FELISTUS KHADI MUKAMI.....2ND COMPLAINANT
-VERSUS-
HELLEN SHIKANDA.....1ST RESPONDENT
NATION MEDIA GROUP PLC.....2ND RESPONDENT
BOARD OF MANAGEMENT SACRED HEART
MUKUMU GIRLS.....3RD RESPONDENT

DETERMINATION

(Pursuant to court order in Nairobi High Court Judicial Review Application No. E382 of 2025, 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 Complainants lodged a complaint alleging the unlawful processing of a minor's personal and sensitive personal data, the commercial use of personal data, cross-border transfers of personal data, and violations of the right to privacy.

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 Complainants on 22nd May, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainants who was an aggrieved data subject.
7. The background of the complaint relates to the Complainants lodging a complaint which was initially declined on 6th January 2025. Thereafter, the Complainants filed a physical complaint, which was received by this Office on 2nd April 2025 and assigned a different Complaint No. ODPC/COMP/0511/2025, involving the same parties and the same set of facts. However, the Complainants disputed having filed the said complaint. This Office therefore discontinued the matter.



8. The Complainants as a result proceeded to court and filed Nairobi High Court Judicial Review Application No. E382 of 2025, seeking an order of Mandamus compelling the Office to admit the initial complaint, Complaint No. ODPC/COMP/0285/2025. On 26th March 2026, the High Court granted the orders sought. Subsequently, the Complaint Submission Form was submitted on 22nd May 2026, and the same was thereafter re-admitted as ODPC/COMP/2118/2026.
9. Moreover, on 21st July 2026, the High Court granted the Office a thirty (30) day extension within which to investigate and determine the complaint.
10. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondents of the complaint filed against it *vide* letters dated 22nd May 2026 and referenced ODPC/CIE/CON/2/1 VOL 2 (346) for Nation Media Group PLC, ODPC/CIE/CON/2/1 VOL 2 (347) for Hellen Shikanda and ODPC/CIE/CON/2/1 VOL 2 (348) for The Board of Management, The Sacred Heart of Mukumu Girls' School. In the notifications of the complaint, the Respondents were informed that if the allegations by the Complainant were true, they were in violation of various Sections of the Act. Further, the Respondents was asked to provide this Office with the following:
- a. A response to the allegations made against it by the Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. The lawful basis for denying the Complainant her right to object
 - d. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint does not take place again; and
 - e. Any other information for the Office to consider.
11. In view of the above, the Office received a response to the Notification of the Complaint by the 1st and 2nd Respondent on the 19th June 2026. The 3rd Respondent on the other hand did not submit a response.
12. This determination is therefore as a result of analysis of the complaint as received, the response by the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

13. The Complainants lodged a complaint alleging the unlawful processing of a minor's personal and sensitive personal data, the commercial use of personal data, cross-border transfers of personal data, and violations of the right to privacy.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

The Complainants allege as follows:

14. The 1st Complainant was born on 25th October 2005. On or about 27th and 28th May 2023, she was a minor aged seventeen (17) years and was a Form Four student at Sacred Heart of Mukumu Girls' School. The 2nd Complainant is the parent and legal guardian of the 1st Complainant.
15. On or about 2020, the 1st Complainant was admitted to Form One at Sacred Heart of Mukumu Girls' School. In the course of her admission, the 3rd Respondent took a photograph of the 1st Complainant for purposes of school admission and administration.
16. On or about May 2023, the 3rd Respondent unlawfully shared the 1st Complainant's photograph with the 1st and 2nd Respondents without the knowledge or consent of her parent and legal guardian. The 1st and 2nd Respondents thereafter unlawfully processed and published the photograph of the 1st Complainant, who was a minor at the material time, in the Saturday Nation special report published on 27th May 2023.
17. The 2nd Respondent further disseminated the 1st Complainant's personal data through its electronic and print publications outside Kenya, including in Uganda, Tanzania and Rwanda, for commercial purposes.
18. The 1st and 2nd Respondents had reported extensively on the symptoms suffered by students who had been hospitalized following the health crisis at the 3rd Respondent's school. In an apology published on 28th May 2023, the 1st and 2nd Respondents disclosed sensitive health data relating to the 1st Complainant, thereby confirming that she had received medical treatment in connection with the said health crisis. The Respondents processed and disclosed the 1st



Complainant's sensitive personal data without the consent of her parent and legal guardian.

19. The Saturday Nation edition published on 27th May 2023 and the Sunday Nation edition published on 28th May 2023 were retailed at Kshs. 60/= in Kenya, Tshs. 1,700/= in Tanzania, Ushs. 2,700/= in Uganda and Rfr. 900/= in Rwanda.
20. The 3rd Respondent breached the 1st Complainant's right to be informed of the use to which her personal data was to be put by sharing her photograph with the 1st and 2nd Respondents without informing her parent and legal guardian or obtaining the requisite consent. The Respondents therefore violated the 1st Complainant's data subject rights as provided under Section 26 read together with Section 27(a) of the Data Protection Act.
21. The Respondents had a duty, pursuant to Section 29 of the Data Protection Act, to inform the 1st Complainant, through her parent and legal guardian, of the purpose for which her personal data was to be processed.
22. The Respondents, in their respective capacities as data controller and/or data processor, had an obligation to refrain from processing the personal data of the 1st Complainant, who was a minor at the material time, without the consent of her parent and/or legal guardian.
23. The publications containing the 1st Complainant's personal data were given prominence on the front page of the Saturday Nation edition of 27th May 2023 and the front page of the Sunday Nation edition of 28th May 2023, thereby exposing the information to a wide readership. In both instances, the publications containing the 1st Complainant's personal data were used to attract readers and induce the purchase of the electronic and print editions of the newspapers.
24. The 1st and 2nd Respondents further violated Section 44 of the Data Protection Act by publishing the following statement:
"This created the impression that the two were among those who had died when in fact they were among those who had been discharged from the hospital during the health crisis at the school and they are still alive."
25. The publications of the 1st and 2nd Respondents dated 27th and 28th May 2023 were distributed and sold in Uganda, Tanzania and Rwanda. The 2nd Respondent, which at the material time operated across borders, had an obligation to obtain

- the consent of the 1st Complainant's parent and legal guardian before disseminating her personal data and sensitive personal data in those jurisdictions.
26. The 1st and 2nd Respondents failed to verify the accuracy of the information concerning the alleged demise of the 1st Complainant before publication. They further failed to provide the minor data subject, through her parent and legal guardian, with an opportunity to access and review her personal data and correct any inaccuracies prior to publication.
27. The 1st and 2nd Respondents breached Regulation 33 of the Data Protection (General) Regulations by processing the 1st Complainant's sensitive personal data relating to the receipt of health services. The Respondents could have achieved the stated purpose of clarification and issuing an apology without disclosing the 1st Complainant's sensitive health data.
28. By disclosing information relating to the 1st Complainant's school and health status in the Sunday Nation edition dated 28th May 2023, the Respondents violated the Complainants' right to privacy.
29. The evidence submitted by the Complainants includes:
- i. A copy of the Saturday Nation publication dated 27th May 2023;
 - ii. A copy of the Sunday Nation apology dated 28th May 2023;
 - iii. Correspondence with the Office of the Data Protection Commissioner (ODPC);
 - iv. The Judgment of the High Court in HCJR/E382/2025; and
 - v. The Complaint Submission Form (Form DPC 1) dated 22nd May 2026.
30. In addition to the complaint, the Complainants sought compensation and the issuance of an Enforcement Notice.

ii. THE 1ST & 2ND RESPONDENT'S RESPONSE

31. The 1st and 2nd Respondents, through their advocates, Dentons Hamilton Harrison & Mathews, filed a response dated 19th June 2025, initially in response to Complaint No. ODPC/COMP/0511/2025. The Complainants subsequently confirmed that they would rely on the said response in the present complaint.
32. The Respondents challenged the jurisdiction of the ODPC on the ground that the impugned article constituted a journalistic and literary publication published in



the print edition of the *Saturday Nation* in the context of a matter of public interest.

33. The Respondents relied on Section 51(1)(b) of the Data Protection Act, which provides for general exemptions from the application of the Act where the processing of personal data is necessary for national security or public interest.
34. The Respondents further relied on Regulations 55 and 56 of the Data Protection (General) Regulations, 2021, which complement the general exemptions under the Act by recognizing circumstances that constitute a public interest. In particular, Regulation 56 recognizes as a permitted general situation the processing of personal data for purposes of lessening or preventing a serious threat to the life, health or safety of a data subject, or to public health or safety. The Respondents submitted that the incident at Sacred Heart of Mukumu Girls' High School, which involved a serious contamination outbreak resulting in student deaths and hospitalizations, fell squarely within these circumstances.
35. The Respondents additionally relied on Section 52(1) of the Act, which provides that the principles of data processing do not apply where: (a) the processing is undertaken for the publication of literary or artistic material; (b) the data controller reasonably believes that publication would be in the public interest; and (c) the data controller reasonably believes that, in all the circumstances, compliance with the relevant provision would be incompatible with the special purposes. Section 52(2) further provides that the belief contemplated under Section 52(1)(b) must be demonstrable by reference to a self-regulatory or issued code of ethics that is in practice and relevant to the publication in question.
36. The Respondents submitted that they acted in accordance with the Nation Media Group's Editorial Policy Guidelines and Objectives, which define public interest to include, inter alia, detecting or exposing crime, serious misdemeanor or anti-social conduct; protecting public health or safety; and preventing the public from being misled by a statement or action of an individual.
37. The Respondents submitted that the impugned article concerned a matter of overriding public interest, namely, the tragic events at Sacred Heart of Mukumu Girls' High School in 2023, during which numerous students fell ill following

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suspected food and water contamination, several deaths were reported, and the incident attracted significant national attention. Accordingly, the Respondents maintained that the publication fell within the exemptions contemplated under the Act and the applicable Regulations and that no violation of the Complainants' data protection rights had occurred.

38. The Respondents acknowledged that the photograph of the 1st Complainant had been erroneously published under the headline "Lost Souls." Upon discovering the error, the Respondents published a correction and public apology in the *Sunday Nation* edition of 28th May 2023. The Respondents maintained that the clarification did not disclose any additional private or sensitive personal data and was issued in the interests of transparency, accountability and professional integrity.

39. The Respondents further stated that they had instituted robust internal measures to ensure compliance with the Data Protection Act, including a comprehensive Data Privacy Policy, the formal designation of a Data Protection Officer, ongoing training and professional development of editorial staff and journalists, and the appointment of an Ombudsman (Public Editor) to act as an intermediary between the organization and the public.

40. The Respondents contended that the Complainants were not entitled to the reliefs sought, on the basis that no actual injury, reputational harm or material loss had been demonstrated.

iii. THE 3RD RESPONDENT'S RESPONSE

41. The 3rd Respondent failed to provide any formal response to the complaint despite being duly notified on 2nd May 2025. The Office scheduled a site visit for 13th - 14th July 2026 to investigate the matter and requested the presence of a Data Protection Officer, ICT personnel, and a representative.

42. No response was received and no cooperation was made from the Respondent despite Officers going for the visit. On 23rd July 2026, the Office issued a final reminder to the 3rd Respondent, granting an additional seven (7) days to comply, specifically noting the High Court's 30-day deadline. The 3rd Respondent has remained silent to date.

43. 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."*

F. ISSUES FOR DETERMINATION

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

- i. Whether ODPC has jurisdiction to handle the complaint against the 1st and 2nd Respondent
- ii. Whether the 3rd Respondent fulfilled its obligations under the Act.
- iii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER ODPC HAS JURISDICTION TO HANDLE THE COMPLAINT AGAINST THE 1ST AND 2ND RESPONDENT

45. The Respondent challenged the jurisdiction of this Office to handle the complaint on two main grounds namely;

- a. Whether the Article falls within public interest under 51(2)(b); and
- b. Whether the Article falls within the exemptions provided for under Sections 52(1)(b) of the Act.

Whether the Article falls within public interest under 51(2)(b)

46. Section 51(2)(b) of the Act provides that the processing of personal data is exempt from the provisions of the Act where such processing is necessary for national security or in the public interest.

47. The 1st Respondent is a health and science reporter employed by the 2nd Respondent. She authored the impugned Article in the course of and as part of her professional journalistic duties.

48. Section 52(1) of the Data Protection Act, 2019 provides that the principles of processing personal data do not apply where the processing is undertaken by a person for the publication of literary or artistic material, the data controller

reasonably believes that the publication would be in the public interest, and the data controller reasonably believes that, in all the circumstances, compliance with the relevant provisions would be incompatible with the special purposes.

49. The tragedy at Mukumu Girls' School, involving a serious contamination outbreak that resulted in student deaths and hospitalizations, was a matter of legitimate public concern. The publication was intended to inform the public of serious health and safety risks affecting school-going children. The publication therefore fell within the concept of public interest as recognized under the Nation Media Group's Editorial Policy Guidelines and Objectives, which include the protection of public health and safety.
50. Upon discovering that the photograph of the 1st Complainant had erroneously been published under the headline "Lost Souls", the 1st Respondent promptly caused a correction and public apology to be published in the *Sunday Nation* edition of 28th May 2023. The correction was published within one day of the original publication, which demonstrated the 1st Respondent's good faith and commitment to professional journalistic standards.
51. The apology clarified that the individuals depicted in the publication were alive and had been discharged from medical care. The disclosure of their discharge status was limited to what was necessary to correct the erroneous impression created by the original publication. The apology was therefore issued in the interests of transparency, accuracy and professional integrity.
52. The actions of the 1st Respondent were undertaken in the course of her professional duties as a journalist. There is no evidence that she acted maliciously or otherwise in a manner inconsistent with her professional obligations.
53. Regulation 55 of the Data Protection (General) Regulations, 2021 provides for permitted general situations and permitted health situations that constitute public interest. Regulation 56 further provides that a permitted general situation includes the processing of personal data for purposes of lessening or preventing a serious threat to the life, health or safety of a data subject, or to public health or safety.
54. The impugned publication concerned the health crisis at Sacred Heart of Mukumu Girls' School in 2023, which involved a serious contamination outbreak resulting

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in student deaths and hospitalizations. The incident attracted significant national attention and raised serious concerns regarding food and water safety in boarding schools.

55. The publication served the legitimate purpose of informing the public about serious health and safety risks affecting school-going children, while also promoting accountability and drawing attention to the need for appropriate measures to prevent similar incidents. The Office therefore finds that the publication concerned a matter of public interest.

Whether the Article falls within the exemptions provided for under Sections 52(1)(b) of the Act.

53. Section 52(1) of the Act provides that the principles of processing personal data shall not apply where: (a) the processing is undertaken by a person for the publication of literary or artistic material; (b) the data controller reasonably believes that the publication would be in the public interest; and (c) the data controller reasonably believes that, in all the circumstances, compliance with the relevant provision would be incompatible with the special purposes.

54. Section 52(2) of the Act further provides that subsection (1)(b) shall only apply where it can be demonstrated that the processing is undertaken in compliance with a self-regulatory or issued code of ethics that is in practice and relevant to the publication in question.

55. The 1st and 2nd Respondents provided their Editorial Policy Guidelines and Objectives, which incorporate, under Part III, a detailed Code of Conduct and Ethics for NMG Journalists. The Office finds that the said Code constitutes a relevant self-regulatory code of ethics for purposes of Section 52(2) of the Act.

56. The NMG Code of Ethics defines public interest to include, inter alia, detecting or exposing crime, serious misdemeanor or anti-social conduct; protecting public health or safety; and preventing the public from being misled by a statement or action of an individual.

57. The Code of Ethics further recognizes that intrusion into, and inquiries concerning, an individual's private life without consent are generally unacceptable unless the public interest is clearly and demonstrably involved.

58. The impugned publication concerned a matter of significant public concern, namely, the tragic events at Sacred Heart of Mukumu Girls' School, which involved a serious threat to public health and safety and attracted substantial national attention.
59. With regard to the alleged breach of the self-regulatory code of ethics, the Office notes that the 1st and 2nd Respondents acknowledged the editorial error in publishing the 1st Complainant's photograph under the headline "Lost Souls" and promptly issued a correction and public apology. The Office considers that the prompt correction and apology demonstrate adherence to the Code's requirements concerning accuracy, fairness and the prompt correction of errors.
60. Accordingly, the Office finds that the 1st and 2nd Respondents demonstrated compliance with the applicable self-regulatory code of ethics for purposes of Section 52(2) of the Act.
61. The Office further finds that the 1st and 2nd Respondents demonstrated that the impugned publication concerned a matter of public interest and that the publication was undertaken pursuant to the NMG Code of Ethics contained in Part III of the Editorial Policy Guidelines and Objectives.
62. In the circumstances, the Office allows the 1st and 2nd Respondents' objection to its jurisdiction. The Office finds that, by virtue of the exemptions provided under Sections 51(2)(b) and 52(1)(b) of the Act, it lacks jurisdiction to determine the complaint against the 1st and 2nd Respondents.

II. WHETHER THE 3RD RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT.

63. In determining this issue, the Office shall consider the following questions:
- Whether the 3rd Respondent had a lawful basis for processing the 1st Complainant's personal data;
 - Whether the 3rd Respondent complied with the applicable principles of data protection in processing the 1st Complainant's personal data; and
 - Whether the 3rd Respondent complied with its duty to notify the 1st Complainant and/or her parent or legal guardian of the collection and intended processing of her personal data.



d. Whether the 3rd Respondent obstructed the Data Commissioner

Whether the 3rd Respondent had a lawful basis for processing the 1st Complainant's personal data;

64. The Office finds that the 1st Complainant's photograph was initially collected in 2020 for the specific purpose of facilitating the 1st Complainant's admission to and administration at the school. The purpose for which the photograph was collected was therefore limited to the 1st Complainant's relationship with the school and the administrative functions arising from her admission and enrolment.
65. The subsequent disclosure and sharing of the photograph with the 1st and 2nd Respondents in May 2023 for purposes of publication constituted further processing for a purpose that was materially different from, and incompatible with, the purpose for which the photograph had originally been collected. The disclosure of the photograph to external parties for journalistic publication was not reasonably connected to the original admission and administrative purpose and, consequently, could not properly be regarded as a continuation of the original processing activity. Moreover, the 3rd Respondent has not provided any evidence to the contrary.
66. Section 33(1)(a) of the Act expressly provides that a data controller shall not process personal data relating to a child unless consent is obtained from the child's parent or guardian. In the present matter, the 1st Complainant was a minor at the material time, and the 3rd Respondent was therefore required to obtain the consent of the 2nd Complainant, as her parent and legal guardian, before undertaking any further processing or disclosure of her personal data.
67. In view of the foregoing, the Office finds that the 3rd Respondent did not have a lawful basis for the further processing of the 1st Complainant's personal data.

Whether the 3rd Respondent complied with the applicable principles of data protection in processing the 1st Complainant's personal data

68. Section 25 of the Act sets out the principles and obligations relating to the processing of personal data. In particular, personal data is required to be

processed in accordance with the right to privacy; lawfully, fairly and transparently; for explicit, specified and legitimate purposes; and in a manner that is adequate, relevant, limited to what is necessary and not excessive in relation to the purposes for which it is processed.

69. In the present case, the 3rd Respondent initially collected the 1st Complainant's photograph for purposes of admission and school administration. While the initial collection of the photograph may have been undertaken for a legitimate purpose, the subsequent disclosure of the photograph to the 1st and 2nd Respondents for publication constituted a separate processing activity. The 3rd Respondent was therefore required to ensure that such further processing complied with the principles set out under Section 25 of the Act.
70. The Office finds that the 3rd Respondent failed to demonstrate that the further processing was lawful, fair and transparent. In particular, there is no evidence that the 1st Complainant or her parent and legal guardian was informed that the photograph collected for admission purposes would be disclosed to third parties for journalistic publication. The 3rd Respondent therefore failed to ensure transparency in relation to the subsequent use and disclosure of the personal data.
71. Further, the disclosure of the photograph was not compatible with the original purpose for which it was collected. The purpose limitation principle requires personal data to be collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes. The use of a student's admission photograph for publication in a newspaper, without demonstrating a lawful basis or compatibility with the original purpose, amounted to processing beyond the scope of the original collection.
72. The Office also takes into account that the 1st Complainant was a minor at the time the photograph was disclosed. This imposed an additional obligation on the 3rd Respondent to exercise heightened care in the handling and disclosure of her personal data and to ensure compliance with the statutory safeguards applicable to children's personal data. The 3rd Respondent has not demonstrated that it obtained the consent of the 2nd Complainant, as the 1st Complainant's parent and legal guardian, before disclosing the photograph for publication.

73. The Office further finds that the 3rd Respondent failed to demonstrate that the disclosure was necessary, proportionate or limited to the purpose for which the personal data had initially been collected. The fact that the photograph was already in the 3rd Respondent's possession did not confer an unrestricted right to disclose or repurpose it.

74. Accordingly, the Office finds that the 3rd Respondent breached the principles of lawfulness, fairness and transparency, purpose limitation, and data minimization under Section 25 of the Act in further processing and disclosing the 1st Complainant's personal data. The 3rd Respondent was therefore not compliant with its obligations as a data controller under the Act.

Whether the 3rd Respondent complied with its duty to notify the 1st Complainant and/or her parent or legal guardian of the collection and intended processing of her personal data.

75. Section 29 of the Data Protection Act imposes a duty on a data controller, before collecting personal data, to inform the data subject of, among other matters, the fact that personal data is being collected, the purpose for which it is being collected, and the rights of the data subject. The obligation to notify is intended to ensure transparency and to enable a data subject to understand and exercise control over the manner in which their personal data is collected and processed.

76. In the present case, the 3rd Respondent collected the 1st Complainant's photograph in 2020 for purposes of admission and school administration. The Office does not find that the initial collection of the photograph for that purpose was, in itself, unlawful. However, the subsequent disclosure of the photograph to the 1st and 2nd Respondents in May 2023 for purposes of publication constituted a further and distinct processing activity.

77. The 3rd Respondent was therefore required to ensure that the 1st Complainant and/or her parent or legal guardian was adequately informed of the intended further use and disclosure of the photograph. There is no evidence before the Office demonstrating that the 3rd Respondent notified the 2nd Complainant that the photograph collected for admission purposes would be shared with third parties, including a media organization, for purposes of publication.

78. The Office further notes that the 1st Complainant was a minor at the material time. The 3rd Respondent therefore had an enhanced obligation to ensure that the parent or legal guardian was appropriately informed about the intended processing and disclosure of the child's personal data. The absence of evidence demonstrating that such notification was provided is particularly significant given that the subsequent processing involved disclosure to third parties for a purpose unrelated to the original purpose of collection.

79. The duty to notify is not discharged merely because personal data was lawfully obtained in the first instance. Where personal data is subsequently used or disclosed for a different purpose, the data controller must ensure that the data subject is adequately informed of the intended processing and the purpose for which the data will be used. The 3rd Respondent has not demonstrated that it fulfilled this obligation.

80. Accordingly, the Office finds that the 3rd Respondent breached its duty to notify under Section 29 of the Act.

Whether the 3rd Respondent obstructed the Data Commissioner

81. Section 61 of the Act provides as follows –

A person who, in relation to the exercise of a power conferred by section 9 –

- (a) obstructs or impedes the Data Commissioner in the exercise of their powers;*
- (b) fails to provide assistance or information requested by the Data Commissioner;*
- (c) refuses to allow the Data Commissioner to enter any premises or to take any person with them in the exercise of their functions;*
- (d) gives to the Data Commissioner any information which is false or misleading in any material aspect;'*

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.

82. The 3rd Respondent failed to file any formal response to the complaint despite having been duly notified of the complaint on 2nd May 2025. In the course of its investigation, the Office scheduled a site visit for 13th and 14th July 2026 and requested the 3rd Respondent to facilitate the attendance of its Data Protection

Officer, ICT personnel and an authorized representative to assist in the investigation.

83. The 3rd Respondent neither responded to the Office's request nor provided any cooperation during the scheduled site visit. Despite the Office's officers attending the premises on the appointed dates, the 3rd Respondent failed to facilitate the investigation or provide the requested information and assistance. Consequently, on 23rd July 2026, the Office issued a final reminder to the 3rd Respondent, granting a further seven (7) days within which to comply and expressly drawing its attention to the thirty (30)-day deadline prescribed by the High Court. The 3rd Respondent has, to date, neither responded to the complaint nor complied with the Office's requests.
84. The Office finds that the 3rd Respondent's continued failure to respond to the complaint, attend to the Office's requests, or facilitate the scheduled site visit amounts to a failure to cooperate with the Data Commissioner in the exercise of the Commissioner's statutory functions.

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

85. 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.
86. The Complainant sought for compensation of KES 15,000,000 for violation of personal data. Section 65 of the Act provides for compensation to data subjects and states, *"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."* Section 65(4) of the Act states that, *"damage includes financial loss and damage not involving financial loss, including distress."* Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
87. Having found that the 3rd Respondent unlawfully processed a minor's personal data and non-compliance of principles of data protection, the 3rd Respondent is

hereby directed to compensate the Complainant a total of Kenya shillings **Three Hundred Thousand shillings only (KES 300,000)**.

88. In addition to the 3rd Respondent contravening the provisions of the law as espoused above, the 3rd Respondent also committed offences stipulated in Section 61 of the Act in refusing to cooperate with the Data Commissioner obstructed the Data Commissioner in the exercise of her powers as enshrined under Section 9 of the Act.

89. As such we are guided accordingly, and we hereby recommend the prosecution of the Respondent's directors for obstructing the Data Commissioner, an offence under Section 61 of the Act.

G. FINAL DETERMINATION

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

- i. The Complaint against the 1st and 2nd Respondent is hereby dismissed.
- ii. The 3rd Respondent is hereby found liable.
- iii. The 3rd Respondent is ordered to Compensate the 1st and 2nd Complainant a total of Kenya shillings **Three Hundred Thousand shillings only (KES 300,000)**.
- iv. A recommendation for prosecution is hereby made against the 3rd Respondent's board of management for obstruction of the Data Commissioner, an offence under Section 61 of the Act;
- v. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 19th day of August 2026.



IMMACULATE KASSAIT, SC, MBS

DATA COMMISSIONER