



OFFICE OF THE DATA PROTECTION COMMISSIONER

**ODPC COMPLAINT NO. 0456 OF 2023 CONSOLIDATED WITH
ODPC/COMP/0862 OF 2023 AND ODPC/COMP/0868 OF 2023**

SHILLAH T.M.K..... 1ST COMPLAINANT

MICHAEL KANGETHE.....2ND COMPLAINANT

ELIJAH NJOROGE.....3RD COMPLAINANT

-VERSUS-

PLATINUM CREDIT LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Section 8(f), 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. The Constitution of Kenya 2010, under Article 31 recognizes the right to privacy. Consequently, in an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter "the Act") was enacted. Section 8 (1) (f) 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) 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.
2. The Office of the Data Protection Commissioner (hereinafter as "the Office") is a regulatory Office, established pursuant to the Data Protection Act, 2019. The Office 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.

3. The Office received a complaint dated 29th March 2023 by Shillah T.M.K through an e-mail.
4. On 29th May 2023, the Office in the exercise of its mandate as envisaged under the Act and in the promotion of justice, notified the Respondent of the complaint filed against it. The respondent received the notification letter on 30th May 2023. In the notification of the complaint filed against the Respondent, the Respondent was to provide: -
 - a) A response to the allegations made against it;
 - b) Any relevant materials or evidence in support of the Response in (a) above;
 - c) Proof of the mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant;
 - d) A data Protection policy outlining the complaints handling mechanisms to deal with matters relating to the rights of a data subject under the Act, the regulations, and any other alleged contravention directed to your attention by data subjects;
 - e) Details of Platinum Credit Limited's level of accuracy while retaining personal data; and
 - f) A Demonstration (by way of a written statement) of their level of compliance with the requirements under the Act and the Regulations.
5. On 25th May 2023, this office received another complaint against the Respondent from Michael Kang'ethe (2nd Complainant). Further, on 26th May 2023, this office received another complaint against the Respondent from Elijah Njoroge (3rd Complainant). Moreover, the subsequent complaints were similar to the earlier received complaint. They all related to the same subject matter and were of a similar nature.
6. On 9th June 2023 vide e-mail, the office received an advance copy of the response from the Respondent providing the Company's Data Protection Policy, the Company's Response to the complaint dated 9th June 2023 and certificate of registration as a data controller as evidence of its compliance with the Act. The actual/hard copy documents were forwarded vide a letter dated 12th June 2023 and received on 13th June 2023.

NA

7. On 20th June 2023, pursuant to regulation 9 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021; considering the three complaints were of the same nature and related to the same subject matter, the complaints filed by the complainants were consolidated.
8. On 14th June 2023, the office sent a letter to the Respondent vide its letter ref no. ODPC/CONF/1/5/VOL 1 (297) informing the Respondent that the response did not fully address the office's notification of complaint letter dated 29th May 2023 and wanted the Respondent to comprehensively respond to the issues **(a) to (f)** of the notification letter dated 29th May 2023. The Respondent was also notified of the two additional complaints that had been filed against the Respondent by Michael Kang'ethe and Elijah Njoroge Njenga touching on the same issues as outlined in the notification letter dated 29th May 2023.
9. With regards to the letter dated 14th June 2023, the Respondent was reminded to provide a comprehensive response to the notification letter and the requested information within seven (7) days from the date thereof.
10. The Respondent failed to provide a response to the office's letter dated the 14th day within the stipulated 7 days.
11. This determination is pegged on the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations 2021 which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

B. NATURE OF THE CONSOLIDATED COMPLAINTS

12. The consolidated complaints relate to the unwarranted and unlawful use of the data subjects' personal data. Furthermore, the complaints also relate to the infringement of the data subjects' rights.
13. The Complainants allege that the Respondent has infringed on their privacy by routinely making incessant calls and messages to them. That the Respondent has stored their phone numbers on its database which the Respondent's sales representative incessantly uses to make phone calls to the complainants.
14. That despite the complainants visiting the Respondent's offices and lodging complaints for it to stop contacting them, the Respondent has disregarded the complainants' requests and it is still making the phone calls to the Complainants without their authorization and or consent.

C. THE RESPONDENT'S RESPONSE TO THE COMPLAINT

15. The response to the complaint was made vide a letter dated 9th June 2023 and received on 13th June 2023.

16. In its response, the Respondent did not address the allegations contained in the complaints levelled against it. The Respondent disregarded the complaints and went ahead to state how it had complied with the Data Protection Act. As such the complaints stand undisputed.

17. As to compliance with the Act, the Respondent stated that:-

- a) The Company collects the personal data of its data subjects directly from the data subjects. Customers' personal data is collected when they voluntarily interact with the Company via the Company's social media pages when they call any of the Company's offices, or when they fill and execute loan application documents. The Company verifies the personal information collected as requested by law, before proceeding with any further processing. Where the personal information is inaccurate or incomplete, the company promptly notifies that data subject and requests accurate or additional information to address the insufficiency.
- b) The Company has implemented measures that enable the data subjects to exercise their rights under the Act and in particular, the Company has customized standard data subject request forms and has published them on its website for ease of access.
- c) The Company has also made available to the data subjects, alternative methods of submitting their access requests. These alternative requests are: - the company's designated data protection e-mail, Company's official telephone number, and by registered post.
- d) The company has a data retention schedule in place to ensure that it stores personal data for as long as is reasonably necessary for the purpose for which the personal data is processed. The company audits and reviews the stored personal data periodically to ensure that it is accurate.
- e) The company has in place a complaint-handling mechanism that ensures that it is always accountable to the data subject for the processing of his/her personal information.
- f) The Respondent also stated that it conducts regular and continuous training for all its employees and independent agents to increase awareness of their obligations toward the usage and disclosure of personal data.

- g) The Respondent went ahead and produced the Company's Certificate of registration as a data controller valid from 10th August 2022; and the Company's Data Protection Policy.

D. ISSUE FOR DETERMINATION

- i. Whether there was any infringement of the Complainants' rights as data subjects as provided for in the Data Protection Act, 2019.

E. ANALYSIS AND DETERMINATION

I. WHETHER THERE WAS ANY INFRINGEMENT OF THE COMPLAINANTS' RIGHTS AS DATA SUBJECTS

18. To contextualize the consolidated complaints, an understanding of what personal data entails is crucial. Section 2 of the Data Protection Act, 2019 defines *personal data as any information relating to an identified or identifiable natural person*. On the same breadth, the Act goes further to define an identifiable natural person as *a person who can be identified directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or social identity*.
19. The core of the consolidated complaints at hand relates to the data subjects' rights and whether the same was respected and or accorded to them. Specifically, the consolidated complaints relate to the right to object by a data subject. As stated earlier in this determination, the Complainants allege that the Respondent has infringed on their privacy by routinely making incessant calls to them. That the Respondent has stored their phone numbers on its database which the Respondent's sales representative incessantly uses to make phone calls to the complainants. That despite the complainants visiting the Respondent's offices and lodging complaints for it to stop contacting them, the Respondent has disregarded the complainants' requests and is still making incessant phone calls to the Complainants without their authorization and or consent.
20. Section 26 of the Data Protection Act, 2019 provides for the rights of a data subject. It provides that: "***A data subject has a right:***
a) To be informed of the use to which their personal data is to be put;

- b) To access their personal data in custody of data controller or data processor;*
- c) To object to the processing of all or part of their personal data; (emphasis mine)*
- d)*

21. From the evidence adduced before this office by the Complainants it is evident the Complainants exercised their right to object to the processing of all or part of their personal data. There is evidence of a 'Cease and desist Communication' letter dated 23rd May 2023 from one of the Complaints addressed to the Respondent. On the said letter, the complainant objected to the processing of his personal data as follows: -

RE: CEASE AND DESIST COMMUNICATION

Dear sir/Madam

I am writing this letter to formally request that Platinum Credit Limited and all its affiliate agents and employees immediately cease and desist all communication with me, as per my rights under applicable laws and regulations.

I have never requested to be contacted by any of your agents and have always informed your agents to never contact me again but you have continued to contact me offering me unnecessary loans which I have clearly and unambiguously rejected.

The constant calls through a sales pitch are tantamount to harassment and I am invoking my right to request that you cease all communication with me, including phone calls, letters, emails, and any other forms of communication.....

22. Also, further evidence adduced indicates that there are numerous threads of emails showing the complainants exercising their right to objection. In the said e-mails the complaints are requesting the Respondent to stop any form of communication in relation to Respondent's company loans with them. In addition, there are numerous message screenshots showing the Respondent Company's agents sending the alleged unnecessary messages to the complainants. In one of those messages the complainant requested the Respondent's agent to indicate what it would take to stop getting the messages as he was not interested in the Respondent Company's loans.

23. From the foregoing, it is evident that the complainants objected to the processing of their personal data yet the Respondent did not accord them that right. The

Respondent blatantly ignored and or refused to accord them their right and continued contacting them despite their objections and refusal.

24. The Respondent in its letter dated 9th June 2023 stated how it has complied with the data protection Act, 2019, and how it has adopted and put in place numerous data protection mechanisms in its organization. To this, the office applauds them and that they are on the right track in ensuring full compliance with the Data Protection Act and Regulations save to add that all the mechanisms put in place seem not to be operational and functional.
25. In as much as the Respondent has stated in its letter dated 9th June 2023 that it has avenues and mechanisms of resolving the data protection complaints and problems the same seem not to have been given effect. If the same would have been in effect, the Complainant's issues and objections would have been resolved a long time ago. As evidenced, the complainants have written on numerous occasions e-mails, messages, and letters objecting to any form of communication or promotional messages to no avail.
26. On making the data protection avenues operational, we note that it is one thing to have the data protection policies, frameworks, procedures, and plans on paper and it is another thing to effect and operationalize the data protection policies, procedures, plans, and frameworks. Without operationalization, the data protection policies, procedures, and plans will have no effect. They will be as good as having nothing at all. Had the Respondent operationalized its data protection policies and mechanisms, we would not have had the complaints at hand. The same would have been resolved first-hand as and when the complaints arose.
27. On that note, considering the Respondent did not provide a Response and evidence to the contrary on the allegations leveled against it, the allegations remain undisputed and as such stand. As shown above, from the evidence adduced by the Complainants, the allegations stand proven.
28. The Respondent is hereby found liable and is hereby ordered to give effect and implement the data protection policies, frameworks, procedures, and plans already established by it.

F. FINAL DETERMINATION

29. The Data Commissioner, therefore, makes the following final determination;
- i. The Respondent is hereby found liable.
 - ii. Enforcement Notice to be issued to the Respondent.
 - iii. Parties have the right to appeal this determination to the High Court of Kenya.

DATED at **NAIROBI** this 26th day of **JUNE** 2023.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

