



OFFICE OF THE DATA PROTECTION COMMISSIONER
ODPC COMPLAINT NO. 0833 OF 2023

ERASTUS MBAKA..... COMPLAINANT

-VERSUS-

METROPOL. CREDIT REFERENCE BUREAU LIMITED.....RESPONDENT

LAW SOCIETY OF KENYA SACCO LIMITED.....INTERESTED PARTY

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 the complaint from the Complainant on 20th May 2023.
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, *vide* a letter of even date, Ref: ODPC/CONF/1/5/Vol 1(270). 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 by the complainant;
 - b) Any relevant materials or evidence in support of the Response in (a) above;
 - c) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant;
 - d) Metropol's 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 Metropol CRB'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. In particular, an elaborate representation of how data subject can exercise their rights in relation to data protection.
5. The Respondent was further reminded on 14th June 2023 to respond to the letter of notification. Subsequently, on 22nd June 2023, the Respondent responded to the Letter of Notification.

6. 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 COMPLAINT

7. The complaint relates to the inaccuracy of the data subject's personal data. The Complainant avers that the Interested Party herein first listed his non-performing loan, [REDACTED], on 31st July 2017. At the pith of the Complainant's non-performing loan dispute, was the allegation that the Interested Party settled another member's loan through his savings. The Complainant consequently challenged the Interested Party's action before the Cooperatives Tribunal, (**Suit No. [REDACTED]**).
8. The complainant contemporaneously expressed his complaint of the erroneous listing to the Respondent, *vide* an email sent on 31st December 2019 at 1826hrs, and a follow-up email sent on 10th January 2020 at 0731hrs. The Complainant subsequently posits that the duplicate loan has not only misrepresented his credit information but also damaged his (the Complainant's) current credit application. It is against this backdrop that the Complainant is seeking the joint deletion of the duplicate loan by the Respondent, and the re-assessment of his credit score, after the deletion of the duplicate loan.

C. THE RESPONDENT'S RESPONSE TO THE COMPLAINT

9. The Respondent responded to the complaint dated 20th May 2023, *vide* a letter dated 20th June 2023, REF: MCRB/D/0375/23, received by this Office on 22nd June 2023, stating that it is licensed by the Central Bank of Kenya, thus properly seized with the following bureau activities encompassed in Regulation 15(1)(a) to (e) under the *Banking (Credit Reference Bureau) Regulations, 2020*:
- a) Obtaining and receiving customer information;

- b) Storage management, evaluation, updating, and dissemination of customer information to subscribers, and other credit information consumers;
 - c) Compiling and maintaining database and generate credit reports from customer information database.
10. The Respondent further postulated that the credit information they possess is strictly provided by authorized financial institutions such as Saccos, who ought to ensure that such information is accurate, pursuant to all applicable laws of the Republic of Kenya including the Banking (CRB) Regulations 2020 and other statutes.
11. The Respondent stated that it exclusively relied on credit information supplied to it by the Interested Party, which is subject to qualified privilege. Moreover, the Respondent asserts that the removal of the subject information without express instructions from the Interested Party would be illegal and contrary to the provisions of Regulation 28 (1) (q) of the *Banking (Credit Reference Bureau) Regulations, 2020*;
12. In addition, the Respondent asserts that the information about the complainant was therefore lawfully received by the Respondent from the Law Society of Kenya Sacco Limited. Further, the said loan was lawfully listed in the credit report as received from the Law Society of Kenya Sacco Limited.
13. The Respondent provided a caveat towards the request by the Complainant that they are required to receive express instructions from the instructing entity. For instance, should the Respondent have removed or deleted the subject information without express instructions from Law Society of Kenya Sacco Limited, that would have been illegality as it would have been contrary to regulation 28 (1) (q) of the *Banking (Credit Reference Bureau) Regulations, 2020* which states that a bureau

shall not delete or remove from its database any credit information which ought to remain in its database.

14. The Respondent further stated that upon receipt of the complaint and demand letter dated 16th January 2020 from the Complainant, they promptly responded and mitigated the occurrence by informing the Complainant of the dispute resolution mechanism in accordance with the Banking (Credit Reference Bureau) Regulations 2020. The Complainant followed the dispute resolution process by filing the dispute form and sharing with the bureau the credit report generated as well as the certified copy of his national identification card.
15. On 16th January 2020, the Respondent informed the Law Society of Kenya Sacco Limited of the Notice of Dispute issued pursuant to Regulation 35(6)(b) of the Credit Reference Bureau Regulations 2013, to confirm the accuracy of the listing information provided to it.
16. The Law Society of Kenya Sacco Limited responded on 16th January 2020 confirming the accuracy of the information and advised that the Respondent retains the listing. Consequently, on 29th January 2020 Metropal Credit Reference Bureau Limited issued a notice of resolution to the Complainant.
17. In this regard, on 2nd June 2023 the Respondent informed the Law Society of Kenya Limited of the Notification of Complaint filed against the bureau with the Office of the Data Protection Commissioner. The Bureau re-confirms the accuracy of the information as such the information is retained in the Complainants Credit Report.
18. The Respondent states that it has a fully functional unit exclusively dedicated to handling data subjects' disputes and has a dedicated telephone line and email for contact purposes. Further, it also has an exhaustive Data Protection Policy which is in conformity with Banking (Credit Reference Bureau Regulations) 2022, the Data Protection Act 2019 and all other applicable laws of the Republic of Kenya.

D. ISSUE FOR DETERMINATION

- i. Whether the complaint dated 20th May 2023 is merited.

E. ANALYSIS AND DETERMINATION

WHETHER THE COMPLAINT HEREIN IS MERITED

19. On this issue, this office notes that this complaint relates to another Case at the Cooperatives Tribunal which is yet to be determined. The merits of this ongoing case form the crux of the Complainant. Our investigations have revealed that the complaint relates to Cooperative Tribunal case no. [REDACTED] – **Law Society of Kenya Sacco Limited -vs- Erastus Mwaniki Mbaka.**

20. As such, this office cannot adjudicate and or give directions to a matter that is still active in other dispute resolution forums especially when the dispute on the other dispute resolution forums forms the crux of the dispute at hand. On that note, this office will not delve into such a matter despite the invitation by the Complainant.

21. In view of the foregoing, this office notes that the Complainant's credit information exchanged between the Respondent and the Interested Party, falls within the rubric of the nature of customer information to be shared under Regulation 18 (1) (q) of the *Banking (Credit Reference Bureau) Regulations, 2020* and as such there exists a legal basis within which the Complainant's data was processed.

F. DETERMINATION

22. In consideration of all the facts of the complaint and evidence tendered, the Data Commissioner makes the following final determination:-

- i. The complaint is hereby dismissed.
- ii. The Complainant can reodge his complaint upon the conclusion of the Cooperative Tribunal case no. [REDACTED] – **Law Society of Kenya Sacco Limited -vs- Erastus Mwaniki Mbaka.**

iii. Both parties have the right to appeal this Determination.

DATED at **NAIROBI** this 11th day of August, 2023.



Immaculate Kassait, MBS
DATA COMMISSIONER



