



**OFFICE OF THE DATA PROTECTION COMMISSIONER
ODPC COMPLAINT NO. 778 OF 2023**

ANORLD MWAURA.....1ST COMPLAINANT

ALEX KARANJA.....2ND COMPLAINANT

-VERSUS-

MULLA PRIDE LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Section 8(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 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 as "the Act") was enacted.
2. Section 8 (1)(f) of the Act provides that the Office of the Data Protection Commissioner (hereinafter as "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.
3. 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. Pursuant to Section 56 of the Act, the Office received two complaints from Anorld Mwaura and Alex Karanja (hereinafter as "the Complainants") dated 11th May, 2023 and 30th May, 2023 respectively and against Mulla Pride Limited (hereinafter as "the Respondent").
5. The Respondent is a company that provides digital loans in Kenya while the Complainants are aggrieved data subjects.
6. The Office in exercise of its mandate as envisaged under the Act and in the promotion of justice, notified the Respondent of the complaints filed against it via a letter dated 16th June, 2023. In the notification of the complaints filed against the Respondent, the Respondent was to provide: -
 - a) A response to the allegations made against it by the Complainants;
 - b) The standard contract between the Respondent and the digital borrowers (the Complainants);
 - c) Details of how it obtained the contacts in the Complainants' phonebooks and whether the Complainants' consented to their phonebook contacts being accessed;
 - d) Details of how it fulfils the Data Subjects' right of rectification and erasure as per Section 40 of the Act;
 - e) The legal basis under which it contacts third party contacts obtained from the digital borrowers' phone books without the third parties' consent;
 - f) The legal basis which it relied on to disclose the Complainants' personal private information to third parties obtained in their (Complainants') phone book contacts;

g) Details of: -

- i. The mitigation measures adopted or being adopted to address the complaints;
- ii. The technological and organizational safeguards that have been put in place to ensure that such occurrence mentioned in the complaint do not occur again; and
- iii. Its 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 alleged contravention directed to their attention by data subjects.

h) Demonstration (by way of written statement) of its 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.

7. On 30th June, 2023, the Respondent filed its response to the complaints via a letter dated 29th June, 2023.

8. Upon receipt of the aforementioned letters and documents, investigations were conducted as required by Regulation 13 (1) of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as "the Enforcement Regulations").

9. This determination is pegged on the provisions of Regulation 14 of 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.

B. NATURE OF THE COMPLAINTS

10. The 1st Complainant alleged that he has been receiving threatening calls and messages from the Respondent about a loan he has no knowledge about. He

states that he was enlisted as a referee despite not knowing the loanee or giving his consent to be a referee.

11. The 2nd Complainant alleged that the Respondent had called and insulted him several times regarding a loan taken by an individual who had his contact on their phone book. He further stated that he had no contractual agreement with the Respondent and therefore it was illegal for the Respondent to contact him.

ANALYSIS OF EVIDENCE ADDUCED

I. EVIDENCE ADDUCED BY THE COMPLAINANTS

12. The 1st Complainant filled the complaint's form and alleged that one of the Respondent's products by the name **KeCredit** had been threatening him through numerous calls and messages. The 1st Complainant produced screenshots of messages from the Respondent as evidence of the same.

13. The 2nd Complainant also filled the complaint's form and alleged that **Faircash loan app**, one of the Respondent's products, called and insulted him several times regarding a loan taken by an individual who had his contact on their phone book.

II. EVIDENCE ADDUCED BY THE RESPONDENT

14. The Respondent via a letter dated 29th June, 2023 responded to our notification of complaint letter.

15. In the said letter, the Respondent stated that: -

- i. Customers phone book access is only allowed once the customer has willingly accepted the access through their mobile application and therefore the allegations made are not true that the contacts are illegally obtained.
- ii. After the customer consents, the customer's contacts can be accessed only for reaching the customers referees for ease of uploading and not any other reason.

- iii. It does not provide its customer's phone book contacts to its debt collection agents to reach out to customers and that it only provides the debtor's phone number to call for debt collection.
- iv. It confirms that it does not access the customers' phone book information for any other motive but for substantiation and simplicity of feed in of referees.
- v. It condemns intimidation and discourages its employees to use it as a way of collecting debts, but some of its employees or recovery collection agents may get over zealous with their collection duties which include calling and sending messages. It asked for forgiveness in cases where clients have complained.
- vi. It indicated that its employees only call its clients and their referees and not anyone else in the phonebook as they do not have access to it.
- vii. It cannot rule out the fact that some collection agents may get argumentative with customers on phone calls and that in such scenarios, when a client complains to its customer service, it always advises a customer to provide evidence whereby the collection agent faces disciplinary actions.
- viii. Its 3 products namely L cash, Fairkash and KeCredit which run as mobile applications, request clients to allow access to contacts in their phonebooks and that the access is strictly for the objective of enabling the client to be able to provide referees to help it contact the client in case of loan repayment default.
- ix. It described how it obtained the contacts in the Complainants' phone book by providing a screenshot of their permission description from its KeCredit mobile application.
- x. Referees are people that the client in full consent willingly listed as their referee hence giving it access to their contacts.
- xi. At no point does it disclose the client's private data to third parties and that its terms and conditions clearly state that the client's personal data obtained during debt application will not be disclosed or communicated to any third party.

16. The Respondent also provided its privacy policy in response to the notification of complaints letter.

C. ISSUES FOR DETERMINATION

- i. Whether the Respondent obtained contacts in its clients' phonebooks and contacted the Complainants regarding loans they had not consented to guarantee.
- ii. Whether the Respondent fulfilled its duty to notify under Section 29 of the Act.
- iii. Whether there was any infringement of the Complainants' Rights as data subjects as provided for in the Data Protection Act, 2019.

I. WHETHER THE RESPONDENT OBTAINED CONTACTS IN ITS CLIENTS' PHONEBOOKS AND CONTACTED THE COMPLAINANTS REGARDING LOANS THEY HAD NOT CONSENTED TO GUARANTEE

17. Section 2 of the Act defines "**consent**" as any manifestation of express, unequivocal, free, specific and informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject.

18. In addition, section 30 of the Act provides that a data controller or data processor shall not process personal data unless the data subject consents to the processing for one or more specified purposes.

19. The 1st Complainant adduced screenshots of messages sent to him by the Respondent requesting him to inform a loanee, who was not known to him, to clear their loan owed to the Respondent. The Respondent through SMS messages threatened the 1st Complainant by stating inter alia that, it will cause Metropol to enlist him in the CRB, it will add him and the loanee to their cult movement and by stating verbatim, "***Sisi ni wanachama wa kumwabudu na kumtukiza Shetani haswa Lucifer* Pesa tunapata kupitia jasho na bidi yetu ya kupata sadaka. Wewe ulitumia hii pes ana [REDACTED] na***

Sasa lazima mlipie ama tuwashughulikie vilivyo. We give you one Hour together with [REDACTED] to clear this Loan!

20. The Respondent in its response admitted to having obtained the contacts in its clients' phonebooks only when the customer willingly grants them access through their mobile application and that after the customer consents, their contacts will be accessed only for purposes of reaching the customers referees.
21. The Respondent further stated that its employees only call its clients and their referees and not anyone else in the phonebook since they do not have access to it. Therefore, the Respondent has not proven that they obtained consent from the 1st Complainant since he was neither a referee nor a guarantor.
22. The 2nd Complainant alleged that the Respondent had called and insulted him several times regarding a loan taken by an individual who had his contact in his phone book.
23. The Respondent in response stated that it could not rule out the fact that some collection agents may get argumentative with customers on phone calls.
24. The Respondent did not adduce evidence of seeking prior consent directly from the Complainants before enlisting them as referees but only stated that it sought consent from its clients to enlist the Complainants as referees.
25. In view of the foregoing, it is evident that the Respondent obtained contacts in its clients' phonebooks and contacted the Complainants regarding loans they had not consented to be enlisted as referees, were not party to them and had no idea of their existence.
26. This office finds that the Respondent did not obtain prior consent from the Complainants before enlisting them as referees. It did not have a mechanism whereby the proposed referees can have the liberty to decide whether or not

they are agreeable to be enlisted as a referee. The Complainants did not have an option to decline to be a referee and were only informed about the loan when the loanee had defaulted or failed to pay in time.

II. WHETHER THE RESPONDENT FULFILLED ITS DUTY TO NOTIFY

27. The Respondent neglected and/or refused to fulfil its duty to notify as provided for under Section 29 of the Act as it did not adduce evidence to this office to show that prior to collecting the Complainant's personal data it informed the Complainants' of: -

- a) Their specified data subject rights as specified under Section 26 of the Act;
- b) The fact that their personal data was being collected;
- c) The purpose for which their personal data was being collected; and
- d) The third parties whose personal data has been or will be transferred to, including details of the safeguards adopted.

III. WHETHER THERE WAS ANY INFRINGEMENT OF THE COMPLAINANTS' RIGHTS AS DATA SUBJECTS AS PROVIDED FOR IN THE DATA PROTECTION ACT, 2019

28. Section 26 of the Data Protection Act provides for the rights of a data subject which are: -

- 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
- d) to correction of false or misleading data; and
- e) to deletion of false or misleading data about them.

29. The Respondent by not informing the Complainants of the use to which their personal data was to be put, at the point of collection of the personal data, violated their right to be informed. The Respondent collected the contacts of:

the Complainants from its clients and did not inform the Complainants that their personal data was being collected and what it was going to be used for. It did not inform the Complainants that it was collecting their mobile phone numbers and that it was going to process that information for the purpose of debt recovery from its defaulting clients.

30. Further, the Respondent collected the mobile phone contacts of the Complainants from third parties without the consent of the Complainants contrary to section 28 (1) of the Act which states that, "a data controller or data processor shall collect personal data directly from the data subject."

31. The Respondent neglected and or refused to fulfil its duty to notify as provided for under Section 29 of the Act as it did not inform the Complainants of the things provided for in Section 29.

32. In view of the foregoing, I arrive at the conclusion that the Respondent violated the rights of the data subjects as provided for in the Act.

D. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. An Enforcement Notice to hereby be issued to the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya.

DATED at **NAIROBI** this 2nd day of August 2023.



Immaculate Kassait, MBS

the Commission's main role is to ensure that the data protection laws are properly implemented and that the Commission is able to monitor and enforce the law. It is also responsible for promoting public awareness of the law and for providing advice and guidance to the public on how to protect their personal data.

