



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 860 OF 2023 AS CONSOLIDATED WITH ODPC  
COMPLAINT NO.978 OF 2023**

**BRIAN KIMANI.....1<sup>ST</sup> COMPLAINANT**

**ANNSALOME WANGARI.....2<sup>ND</sup> COMPLAINANT**

**-VERSUS-**

**ZILLIONS CREDIT 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. Section 8 (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) 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 two (2) complaints by the 1<sup>st</sup> and 2<sup>nd</sup> Complainants on 25<sup>th</sup> May 2023 and 12<sup>th</sup> June 2023 pursuant to Section 56 of the Act and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as "the Regulations") has conducted investigations into the complaints.
4. The Respondent is a digital credit provider that runs Metaloan and Zash loan products and the complainants are parties who received messages from the Respondent.
5. 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 vide a letter dated 20<sup>th</sup> June, 2023 and received by the Respondent on 21<sup>st</sup> June, 2023. In the notification of the complaint filed against the Respondent, the Respondent was to provide: --
  - (a) A response to the allegation made against them by the complainants;
  - (b) Any relevant materials or evidence in support of the response;
  - (c) The standard contract between themselves and the complainants.
  - (d) The legal basis relied upon to process and engage with the complainants, whether or how they fulfill the duty to notify under Section 29 of the Data Protection Act, 2019;
  - (e) Demonstration of how the Respondent balances the rights and freedoms of the data subjects *vis-à-vis* their internal policies and procedures;
  - (f) Details (in writing) of:

161

- (i) The mitigation measures adopted or being adopted to address matters arising from the complaints;
  - (ii) The technological and organizational safeguards that have been put in place to ensure that such occurrences mentioned in the complaints do not take place again; and
  - (iii) Their 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.
- (g) 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 a data subject can exercise their rights in relation to data protection.
6. On 3<sup>rd</sup> July, 2023 the Respondents wrote an email requesting to resolve the complaint through Alternative Dispute Resolution (ADR) but still filed its response to the complaints vide a letter dated 4<sup>th</sup> July 2023.
7. It is noteworthy that the ADR process was not successful necessitating this Office to continue with investigations into the complaints.
8. Upon receipt of the Respondent's email and response letter, investigations were conducted as required by Regulation 13 (1) of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021.
9. This determination is pegged on the provisions of Regulation 14 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 1<sup>st</sup> Complainant alleged that Meta Loan, a product of the Respondent, was calling and asking him to repay their loan. He averred that he never took a loan from the Respondent. Later, they called asking him to talk to a third party to pay their loan.

11. The 2<sup>nd</sup> Complainant alleged that she was receiving unending calls from Zash Loan, a product of the Respondent, telling her to pay a third party's loan since the person used her as a guarantor. She attached screenshots as proof of the many calls she received from Zash Loan.

### **C. THE RESPONDENT'S RESPONSE**

12. The Respondent via 4<sup>th</sup> July 2023 responded to the Notification of Complaint. On the 1<sup>st</sup> Complainant, the Respondent averred that his contact details were provided by a third party who was one of their borrowers who was required to provide alternative phone numbers in addition to their primary phone number when applying for a loan.
13. Further, the Respondent stated that the alternative phone number aids in reaching the customer in the event that they are unreachable on their primary phone number and that it is only used to request the third party to pass information to the borrower to pay their outstanding loan facility is at least 100 days overdue.
14. The Respondent further confirmed that the 1<sup>st</sup> Complainant was contacted but stated that it was only for purposes of requesting him to pass information to the borrower to repay the loan she had with the Respondent.
15. The Respondent stated that the contact details of the 1<sup>st</sup> Complainant was available to them through its voluntary submission by the borrower and denied that the 1<sup>st</sup> Complainant was asked to repay any loan facility and no evidence was provided in that regard.
16. With regards to the 2<sup>nd</sup> Complainant, the Respondent acknowledged that they received the email correspondence from the Complainant complaining of the unending calls from Zash Loan.

17. The Respondent averred that the 2<sup>nd</sup> Complainant was informed that her number had been provided by a borrower as an emergency contact when they applied for a loan facility. They informed the Complainant that they were not required to pay any loan facility but were contacted to pass information to the borrower to pay their loan.

The Respondent provided evidence of an email correspondence dated 19<sup>th</sup> June 2023 sent to the 2<sup>nd</sup> Complainant stating their reasons for calling her which was to pass information to the borrower to repay their loan with them.

18. The Respondent confirmed that they do not have a standard contract between themselves and the Complainants because they were not their primary customers.

19. On the legal basis of engaging with the Complainants, the Respondent averred that the contact details were voluntarily provided by their customers at the point of taking a loan facility. However, due to the number of complaints received by their customers, they have updated their Terms of Conditions and their Privacy Policy.

Further, they have introduced an Emergency Contacts Privacy Notice to clarify its policy and its dealings as related to emergency contacts provided by their borrowers. They annexed the Notice as evidence of the same.

20. The Respondent stated that they are undertaking technological reforms which are at a testing stage whereby an emergency contact will receive a notification link to verify their details and accept or decline being added as an emergency contact and accept the terms of the Emergency Contacts Privacy Notice.

21. With regard to the question of the duty to notify under Section 29 of the Act, the Respondent stated that they have a Privacy Policy in place which sets out

provisions relating to the information that they collect, why the information is collected, how the information collected is used and shared, where the information is stored, the obligations and rights of the customers as data subjects and provisions relating to data retention.

They also averred that they have a Data Protection Policy in place which provides that they adhere to the principles listed therein relating to processing of personal data which are guided by the provisions of the Act. The Respondent attached the policy as part of their evidence.

#### **D. ISSUES FOR DETERMINATION**

- i. Whether the Respondent fulfilled its duty to notify the Complainants of the use of their contact details as per section 29 of the Act.
- ii. 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 FULFILLED ITS DUTY TO NOTIFY THE COMPLAINANTS OF THE USE OF THEIR CONTACT DETAILS AS PER SECTION 29 OF THE ACT**

22. Section 28 of the DPA provides that a data controller shall collect personal data directly from the data subject and that the collection from another source is only necessary:

- i. For the prevention, detection, investigation, prosecution and punishment of crime.
- ii. For the enforcement of a law which imposes a pecuniary penalty
- iii. For the protection of the interests of the data subject or another person.

In this regard, the DPA has set out the parameters in which data can be collected from other sources other than the data subject in question.

23. Section 29 on the other hand provides for duty to notify to the data controllers and data processors to the data subjects before collection of their personal data.
24. The Respondent in its response admitted to having contacted the Complainants in a bid to have them inform the borrowers of their outstanding loans. They stated that they obtained the contacts from their borrowers who provided the information voluntarily. However, this office notes that the said data collection falls outside the ambit of section 28 of the DPA.
25. The Respondent averred that they are in the process of putting in place reforms to ensure that guarantors are informed prior to being listed as emergency contacts. This reform is noted. However, for the purpose of this complaint, the Respondent has failed to prove that the Complainants were duly informed of their numbers being listed as emergency contacts.
26. In this regard, this office finds that the Respondent did not obtain prior consent from the Complainants and did not notify them before enlisting them as emergency contacts. Further, it did not have a mechanism in place to allow the proposed guarantor(s) to decide whether or not they will guarantee the loanees, how much they will guarantee, and whom they will guarantee. Therefore, the Complainants had no informed choice when the Respondent decided to place them as guarantors.
27. Therefore, this office finds that the Respondent is liable for breach of sections 28 and 29 of the Act.

**II. 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 the defaulting borrowers.

30. Further, as a data controller, the Respondent should only collect personal data **directly** from the data subject as per section 28 of the Act unless the data subject has **consented** to the collection of their data from another source. Further, they should have informed the Complainants, before collecting their phone numbers, (regardless of the mode of collection) the fact that they have their phone numbers and that they will be contacted in the event the borrowers defaulted in repaying their loans.



31. In view of the foregoing, I find that the Respondent violated the rights of the data subjects as provided for in the Act by failing to inform the Complainants of the collection and use of their personal data and that the Respondent did not collect personal data directly from the data subjects.

#### **E. FINAL DETERMINATION**

32. 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 22<sup>nd</sup> day of August 2023



**Immaculate Kassait, MBS  
DATA COMMISSIONER**

