



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1632 OF 2023

SAMMY MUCHANE..... COMPLAINANT

-VERSUS-

**AIRTEL NETWORKS
KENYA LTDRESPONDENT**

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. This determination is in respect of a complaint lodged by Sammy Muchane (hereinafter 'the Complainant') against Airtel Networks Kenya Limited (hereinafter 'the Respondent') alleging a violation of the Complainant's right to privacy. The Complainant claimed that the Respondent shared his phone number with debt collectors who in turn continuously and persistently harassed him, yet, he owed no outstanding debt to the Respondent.

B. LEGAL BASIS

2. Article 31 (c) and (d) of the Constitution of Kenya 2010 provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter 'this Office' 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 (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.

C. BACKGROUND OF THE COMPLAINT

5. The Office received a complaint by the Complainant against the Respondent on 7th September, 2023 pursuant to Section 56 of the Act and Regulation 4 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter the 'Enforcement Regulations')
6. The Complainant states that on 4th September 2023 he received an email from a third party, whom he presumed to be a debt collector with the subject "*OUTSTANDING DEBT OWED TO AIRTEL*" and a follow up email with the subject "*AIRTEL DEMAND LETTER FOR SERVICES RENDERED*".
7. The Complainant further states that these services had been paid and settled by or on 17th January 2023 and that all arrears had been cleared from his end. The Complainant wrote to the Respondent attaching receipts and previous communication between himself and the Respondent and also demanded for the issue to be resolved with immediate effect.
8. The Complainant states that despite multiple requests to the Respondent to suspend and/or terminate the services previously rendered and to further stop contacting him about the settled arrears, the Respondent failed to resolve the issue.
9. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 21st

September, 2023 referenced ODPC/CONF/1/5 VOL 1 (432) and required their response within 14 days. 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 mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant
- d. The legal basis relied upon to process and engage with the complainants, whether or how they fulfil the duty to notify under Section 29 of the Data Protection Act, 2019;
- e. Details of how it fulfils the Data Subject's right of rectification and erasure as per Section 40 of the Act;
- f. The technological and organisational safeguards that have been put in place to ensure that such occurrence mentioned in the Complaint does not take place again.
- g. The organization's data protection policy outlining the complaints handling mechanism to deal with matters relating to the rights of data subjects under the Act, the Enforcement Regulations and any alleged contravention directed to your attention by data subjects.
- h. Demonstration (by way of written statement) of your level of compliance with the requirements under the Act and the Enforcement Regulations. In particular, an elaborate representation of how data subject can exercise their rights in relation to data protection.

10. The Respondent responded to the notification of complaint letter *vide* a letter dated 6th October, 2023.

11. This determination is therefore a result of the analysis of the complaint as received, the responses from the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

I. COMPLAINANT'S CASE

12. On or about 10th February 2021, the Complainant states that he wrote an email to the Respondent with a request to suspend the internet services rendered to him.

13. He states that a suspension notice has a fixed timeline of 30 days and the same ended on 10th March 2021. This is also the same time when he settled the March invoice of Ksh.1612.91

14. The Complainant goes on to state that he continued to receive requests of payment from the Respondent on the already paid and settled invoices. He opted to forward the receipts of payment to the Respondent requesting them to resolve the issue and suspend his account permanently.

15. On or about 2nd July 2021, the Complainant reached out to the Respondent inquiring on why he is still receiving requests for payment for services that he discontinued.

16. Seeing as there was no action from the Respondent, the Complainant wrote an email, reminding the Respondent that he had requested that services be discontinued and that all amounts payable had been cleared. He copied the email to the Respondent's customer service with the confirmation of payment for February 2021 attached to it.

17. The Complainant states, when the mail messages persisted and seeing as his contacts had been forwarded to debt collectors, he filed a complaint with the office of 7th September 2023 for breach of privacy.

II. RESPONDENT'S RESPONSE

18. The Respondent, on 6th October, 2023 provided a response to the allegations against it.
19. With regard to the allegations by the Complainant, the Respondent states that, it entered into a contract for provision of fixed data services for a period of twelve months with the Complainant. The Complainant was onboarded in November 2020 and was to be billed monthly and in advance and that's these services were accessed until 10th February 2021 when the Complainant requested for the services to be suspended.
20. The Respondent states that its Service Order Forms (SOF) provide for a thirty-day termination notice period within which period the statement of accounts will be reconciled. Where a customer does not owe any money, their account is terminated upon expiry of the thirty days. However, if there is any amount disputed, then the account remains suspended pending reconciliation of accounts.
21. The Respondent avers that the Complainant's account was suspended pending reconciliation but was erroneously not closed. The Respondent further states that it has since reconciled its accounts and rectified the error.
22. The Respondent also avers that upon being notified of the complaint by the Office, it immediately recalled instructions to the debt collection agency, and upon reconciling the accounts, an updated statement of account was prepared and the Complainant's account marked as terminated on its systems. The Respondent further states that this position was communicated to the Complainant.
23. While carrying out investigations the Office reached out to the Complainant to confirm the Respondent's position. The Complainant confirmed that the Respondent *via* email dated 24th October 2023 reached out and communicated its official position with regard to his complaint.

E. SUMMARY OF EVIDENCE ADDUCED

I. THE COMPLAINANT'S EVIDENCE

24. As part of his evidence, the Complainant attached:

- a. emails where he sought for correction from the Respondent on the resolution of the issue.
- b. Emails showing responses from the Respondent

II. THE RESPONDENT'S EVIDENCE

25. As part of its evidence, the Respondent provided;

- a. response to the allegations against them *vide* a letter dated 6th October 2023.
- b. A copy of the system record.
- c. Service order form and the terms and conditions.
- d. Letter of engagement between itself and its debt collectors.
- e. Data processing agreement.
- f. Airtel Networks Kenya Limited Data Protection & Privacy Policy.
- g. Email to the data collectors instructing them not to engage the Complainant pending internal resolution of dispute raised.

F. ISSUES FOR DETERMINATION

26. Having considered the nature of the complaint, the evidence adduced by all parties to the complaint and the investigations conducted by this Office, the issues for determination are therefore:

i. Whether there was infringement on the Complainant's right to privacy under the Act

ii. Whether the complaint was sufficiently addressed by the Respondent; and

I. WHETHER THERE WAS INFRINGEMENT OF COMPLAINANT'S RIGHT TO PRIVACY UNDER THE ACT

27. Data subject's rights are outlined under Section 26 of the Act and they 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*

28. In accordance with the data protection principles under Section 25 of the Act, every data controller or data processor shall ensure that personal data is: -

- a. processed in accordance with the right to privacy of the data subject*
- b. processed lawfully, fairly and in a transparent manner in relation to any data subject*
- c. collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes*
- d. adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed*
- e. collected only where a valid explanation is provided whenever information relating to family or private affairs is required*
- f. accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay*
- g. kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and*
- h. not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject*

29. According to Section 25 of the Act and with regard to the Complainant's complaint, as a Data Controller and Processor it is the Respondent's duty to ensure that the Complainant's data is processed in accordance with the right to

privacy, that it is kept up to date and in a form that clearly identifies the Complainant and that every reasonable step has been taken to ensure that any inaccurate personal data is erased or rectified without delay.

30. The Complainant's account was erroneously not closed at the point of initial reconciliation. The Complainant, at the point of discovery of the error reached out to the Respondent notifying it of the error. The Respondent *via* email dated 16th January 2022 confirmed to the Complainant that the issue had been addressed, corrected and closed.

31. On 17th January 2023, the Complainant received a letter from Airtel Networks Kenya Limited with the subject *as Airtel Demand Letter For Services Under Account No. PE2636256329* and the letter referred to an alleged outstanding and undisputed debt of Ksh13666.709999999999 pertaining to fixed data services rendered in 2021. The Respondent further claimed that the account remains in arrears and the Complainant was advised to attach any remittance as to the debt owed to a debt collector who's email contact was provided as credicontrolkenya@ke.airtel.com

32. The Complainant exercised his right to request for deletion of false or misleading data about them and the Respondent had an obligation to take every reasonable step to ensure that any inaccurate personal data is erased or rectified without delay.

33. When the Respondent confirmed that the Complainant's account had been closed, it had a subsequent obligation to keep that data in a proper form which identifies the Complainant. Since the Respondent had collected the Complainant's data for purposes of rendering fixed data, upon cancellation of the services by the Complainant, the Respondent had no necessary nor legitimate reason to keep the data.

34. The Respondent *via* its letter to the Complainant dated 17th January 2023 demonstrated a violation of the principles of data protection and subsequent infringement on the right to privacy on the Complainant.

35. In view of the foregoing, The Office therefore finds that that the Complainant's complaint has merit and that the Respondent *vide* its actions occasioned an infringement on the Complainant's right to privacy under Sections 25 and 26 of the Act.

II. WHETHER THE COMPLAINT WAS SUFFICIENTLY ADDRESSED BY THE RESPONDENT

36. In its response dated 6th October 2023, the Respondent stated that, as requested by the Complainant, the Complainant's account was suspended but erroneously not closed. It further states that the account has since been reconciled and the error rectified.

37. The Respondent also avers that upon notification of complaint by the Office, instructions to the debt collection agency were recalled. An email dated 26th September 2023 as to this effect was attached for reference.

38. The Respondent further stated that the Complainant's account has since been marked as terminated on its systems and a system log print out was attached for reference. Then Respondent further averred that it would communicate its position to the Complainant.

39. The Office contacted the Complainant to verify the details and *vide* an email dated 24th October 2023 the Respondent wrote to the Complainant confirming that his account was fully updated and terminated on their systems.

40. The Respondent avers that it has complied with Section 40 of the Act. This section provides that a data subject may request a data controller or data processor:

- a. to rectify without undue delay personal data in its possession or under its control that is inaccurate, out-dated, incomplete or misleading; or*
- b. to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorised to retain, irrelevant, excessive or obtained unlawfully.*

Where the data controller has shared the personal data with a third party for processing purposes, the data controller or data processor shall take all reasonable steps to inform third parties processing such data, that the data subject has requested—

a) the rectification of such personal data in their possession or under their control that is inaccurate, outdated, incomplete or misleading; or

b) the erasure or destruction of such personal data that the data controller is no longer authorised to retain, irrelevant, excessive or obtained unlawfully.

41. The Respondent states that these actions were promptly undertaken. The Respondent further states that it has since initiated Data Protection and Complaints Handling Procedure guide to better handle such future requests from its clients with timelines within which to comply.

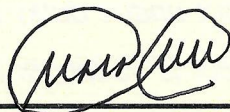
42. Upon careful consideration of the foregoing, the evidence adduced, the Complainant's feedback, and no further subsequent nor arising issues, the Office finds that the Respondent sufficiently addressed the complaint to the satisfaction of the Complainant.

G. FINAL DETERMINATION

43. In consideration of all the facts of the complaint, the evidence tendered and the investigations conducted, the Data Commissioner makes the following determination:

- i. The complaint is dismissed.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within 30 days.

DATED at **NAIROBI** this 1st day of December 2023



Immaculate Kassait, MBS
DATA COMMISSIONER