



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 1799 OF 2023**

**FAITH KOYO.....COMPLAINANT**

**-VERSUS-**

**ZAMARADI CAPITAL & CREDIT GROUP LIMITED**

**T/A JUU CASH.....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. This Complaint is in respect of the Complainant's claim that the Respondent has been continuously contacting her to repay a loan that was taken by another third party yet she was not the third party's guarantor at all material times when the third party took a loan from the Respondent.

**B. LEGAL BASIS**

2. The Constitution of Kenya 2010, under Article 31 (c) and (d) provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter known as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter 'this Office' and/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.
5. This determination is pegged on the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (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.

### **C. BACKGROUND OF THE COMPLAINT**

6. This Office received a complaint from the Complainant on 27<sup>th</sup> September 2023. The complaint was lodged 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') from the Complainant who is the aggrieved data subject.
7. The Respondent, Zamaradi Capital & Credit Group Limited, is a digital credit provider with a money lending product known as '**Juu Cash**'.
8. Pursuant to Regulation 11 of the Enforcement Regulations, on 7<sup>th</sup> November 2023 this Office notified the Respondent of the complaint filed against it *via* a letter dated 7<sup>th</sup> November 2023 referenced ODPC/CONF/1/5 VOL 1 (534) and required their response within 14 days.
9. The Respondent responded to the notifications of the complaint *via* a letter dated 24<sup>th</sup> November 2023.

10. This determination is therefore as a result of analysis of the complaint as received and the response from the Respondent.

#### **D. NATURE OF THE COMPLAINT**

11. The Complainant alleges that the Respondent is sending her texts with threats using different numbers telling her to tell a third-party person who is among her contact list to repay a loan that the third party took from the Respondent. The complainant further alleges that she was not a guarantor to the purported third party when the third party took the loan from the Respondent.

12. The Complainant further alleges that the numerous calls and threats she is receiving from the Respondent are causing her mental stress since she has no knowledge of the purported loan taken by the third party. She alleges that she was not there when the said loan was taken. Further, upon contacting the alleged third party that took the loan, the third party confirmed to her that it did not list her as a guarantor when it took the purported loan from the Respondent.

#### **E. SUMMARY OF EVIDENCE ADDUCED**

##### **i. THE COMPLAINANTS' CASE**

13. In addition to filling out the complaint form, the Complainant provided screenshots and printouts of the numerous messages that she has been receiving from the Respondent and/or its agents to support her claim.

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

14. In its response, the Respondent stated that upon receiving this Office's notification, they reached out to their Client, a third party to the Complaint, *via* email on 5<sup>th</sup> October 2023 in an attempt to establish further details and particulars surrounding her complaint and hopefully, amicably resolve the same. The Respondent went ahead and attached the email sent to the said third party. From the email sent, it is evident that the person the Respondent attempted to contact with an aim of amicably resolving the complaint was their Client, who was the borrower and a third party to the complaint and not the Complainant.

15. In its response, the Respondent further stated that it sought to find out the details of their employee who had contacted the third party by establishing the day of contact and time in a bid to establish whether or not the said person was in their staff/ employee database. The Respondent further stated that the third-party person it contacted did not and is still yet to respond to the said email and their efforts to amicably resolve the matter has been unsuccessful. The Respondent also stated that their efforts to reach the third-party has been in vain.

#### **F. ISSUES FOR DETERMINATION**

16. The following issues fall for determination by this Office:

- i. Whether the Complainant's personal information/data was lawfully processed; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

#### **I. WHETHER THE COMPLAINANT'S PERSONAL INFORMATION/ DATA WAS LAWFULLY PROCESSED**

17. From the allegations put forth by the Complainant, it is evident that the complaint relates to the processing of personal data wherein the Complainant alleges that she has been receiving incessant messages from the Respondent demanding payment from her as a guarantor of a loan taken by a certain third party yet she never guaranteed the third party of the loan that was taken.

18. Section 2 of the Data Protection Act defines processing as "*any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means such as:- (a) collection, recording, organization, structuring; (b) storage, adaptation or alteration; (c) retrieval, consultation or use; (d) disclosure by transmission, dissemination, or otherwise making available; or (e) alignment or combination, restriction, erasure or destruction.*"

19. The above definition augments the earlier stated position that at all material times the Respondent was processing the Complainant's personal data.

20. Having established that indeed all the while the Respondent was processing the Complainant's personal data, we now turn to the question on whether the Complainant's personal information/data was lawfully processed.

21. Section 30 of the Data Protection Act provides the lawful bases for processing personal data. It provides:-

*30. Lawful processing of personal data*

*(1) A data controller or data processor shall not process personal data, unless*

*(a) the data subject consents to the processing for one or more specified purposes;*

*or*

*(b) the processing is necessary-*

*(i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract;*

*(ii) for compliance with any legal obligation to which the controller is subject;*

*(iii) in order to protect the vital interests of the data subject or another natural person;*

*(iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*

*(v) the performance of any task carried out by a public authority;*

*(vi) for the exercise, by any person in the public interest, of any other functions of a public nature;*

*(vii) for the legitimate interests pursued by the data controller or data processor by a third party to whom the data is disclosed, except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject; or*

*(viii) for the purpose of historical, statistical, journalistic, literature and art or scientific research.*

*(2).....*

22. The above-stated bases are the lawful instances upon which a data controller, the Respondent herein, should have processed the Complainant's personal data.
23. Related to the Complaint, we note that the Respondent did not respond to the complaint that is before this Office. Instead of responding to the complaint, it provided a response relating to the third party who was not a party to the complaint. The Respondent demonstrated how it had tried reaching the third party to resolve the complaint as opposed to how it had addressed the Complainant's complaint. All the evidence adduced and all the actions that the Respondent said it was taking was in relation to the third party.
24. The Respondent stated that it sought to find out the details of the person who had contacted the third party by establishing the day of contact and time in a bid to establish whether or not the said person was in their staff/ employee database. In addition, the email thread evidence adduced by the Respondent shows that the Respondent was in deed contacting the third party and not the Complainant.
25. That being said, it therefore follows that all the allegations and issues raised by the Complainant as against the Respondent remain uncontroverted. The Respondent did not demonstrate to this Office the basis upon which it relied upon to process the Complainant's personal data as envisaged under the Act.
26. As such, this Office therefore finds that the Complainant's personal data was not processed lawfully.

**II. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.**

27. Pursuant to Regulation 14 (2) of the Enforcement Regulations, a determination shall state the remedy to which the complainant is entitled. Further, the remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.
28. Having considered the merits of the Complaint, the evidence adduced by both the Complainant and the Respondent, and having found that the Respondent did not process the Complainant's personal data in accordance with the law, it

therefore follows that there has been a violation of the Complainant's rights by the Respondent.

29. Section 65 (1) of the Act provides for compensation to a data subject and states that a person who suffers damage by reason of a contravention of a requirement of the Act is entitled to compensation for that damage from the data controller. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.
30. Regulation 14 (3) (e) of the Enforcement Regulations further provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
31. As such, the complainant rightfully claimed for the remedy of compensation against the Respondent. Further, the Respondent did not adduce any evidence in response, specifically, to the Complainant's complaint. Consequently, the Respondent is hereby directed to compensate the Complainant Kshs. **200,000/= (Two Hundred Thousand shillings Only)** for unlawfully processing the Complainant's personal data.
32. Before we pen off, we would like to note that the Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling procedure and Enforcement) Regulations, 2021 further contemplate, as a remedy, the issuance of enforcement notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto. On that note, we are guided accordingly and an Enforcement Notice hereby ensues as against the Respondent.

## **G. FINAL DETERMINATION**

33. In the ultimate, the Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable for unlawfully processing the Complainant's personal data.

- ii. The Respondent is ordered to Compensate the Complainant **KES 200,000/= ( Two Hundred Thousand Kenya Shillings Only)** for the unlawful processing of the complainant's personal data.
- iii. An Enforcement Notice be and is hereby issued against the Respondent.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 15<sup>th</sup> day of December 2023.



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**IMMACULATE KASSAIT, MBS  
DATA COMMISSIONER**