



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 1829 OF 2023**

**JAMES KABIRU.....COMPLAINANT**

**-VERSUS-**

**SAFARICOM PLC.....RESPONDENT**

**-AND-**

**GUARANTY TRUST BANK (KENYA)  
LIMITED.....INTERESTED PARTY**

**DETERMINATION**

*(Pursuant to Section 8 (1) (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 complaint filed against Safaricom PLC (hereinafter as 'the Respondent') relates to the alleged sharing of John Kabiru's (hereinafter as 'the Complainant') personal mobile phone number with Guaranty Trust Bank (Kenya) Limited's customers (hereinafter as 'the Interested Party') who make payments to Mount Kenya University via paybill and occasionally require transaction reversals to be initiated by the Complainant, a former employee of the Interested Party.

## **B. LEGAL BASIS**

2. Article 31 (c) and (d) of the Constitution of Kenya provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter as '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 (1) (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 (Complaint Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as 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. NATURE OF THE COMPLAINT**

6. The Office received a complaint from the Complainant dated 28<sup>th</sup> September, 2023 against Safaricom PLC, pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations.

7. After a preliminary review of the complaint, the Office enjoined Guaranty Trust Bank (Kenya) Limited as an Interested Party in line with Regulation 12 of the Enforcement Regulations.
8. The Respondent is a telecommunications company that offers a range of services, including voice and data services as well as M-Pesa, among other services.
9. The Interested Party is a commercial bank in Kenya that offers a range of services, including online/internet banking, retail banking, corporate banking as well as investment banking, among other services.
10. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the Complaint filed against it vide a letter dated 9<sup>th</sup> November, 2023 referenced ODPC/CONF/1/5 VOL 1(549) and required its response within 14 days. 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;
  - c. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint does not occur again;
  - d. The Standard Contract that it had with the Interested Party, if any;
  - e. Details of how it fulfills the Data Subjects' right of rectification and erasure as per Section 40 of the Act;
  - f. The Data Processing Agreement it had with the Interested Party, if any;
  - g. Details (in writing) of the technical and organizational safeguards measures to implement data protection principles; and

h. Any other information that it wishes this Office to consider in reaching its findings.

11. Pursuant to Regulation 12 of the Enforcement Regulations, the Office ordered for the enjoining of the Interested Party in the matter vide a letter referenced ODPC/CONF/1/5 VOL 1 (548) and dated 9<sup>th</sup> November, 2023. In the said notice/letter, the Interested Party was to provide: -

- a. A response to the allegations made against it;
- b. Any relevant materials or evidence in support of the response;
- c. Proof of having employed and/or having terminated employment with the Complainant;
- d. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant;
- e. Details of how it obtained the Complainant's personal data;
- f. The legal basis relied upon to process and engage with the Complainant's personal data and whether or how it fulfils the duty to notify under Section 29 of the Act;
- g. Details of how it fulfils the Data Subject's right of rectification and erasure as per Section 40 of the Act;
- h. The Data Processing Agreement it had with the Respondent, if any;
- i. The technical and organizational safeguards designed to implement data protection by design or by default; and
- j. Any other information that it wishes this Office to consider in reaching its findings.

12. Both the Respondent and the Interested party put in their responses to the complaint *via* letters dated 30<sup>th</sup> November 2023.



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

#### **D. SUMMARY OF EVIDENCE ADDUCED**

##### **I. THE COMPLAINANT'S CASE**

14. The Complainant alleged that the Respondent has been sharing his personal mobile phone number with the Interested Party's customers who pay to Mount Kenya University and require transaction reversals to be initiated by the Complainant who is a former employee of the Interested Party. He provided screenshots of WhatsApp messages from the Respondent's Zuri Chatbot as proof of the same.

15. The Complainant alleged that the Respondent's customer care agents have been advising the said customers of Mount Kenya University to contact him for reversals and that he has advised the Respondent to stop sharing his personal number in vain.

16. Further, the Complainant alleges that this has been going on from 2018 to date and it worsens during school fees payment season.

17. The Complainant stated that he was employed by the Interested Party and was working in the Information Security Department where he created platforms for managing Mpesa paybills for several Organizations, one of them being Mt. Kenya University. He provided a Certificate of Service from the Interested Party dated 2<sup>nd</sup> November, 2023 as proof that he was a former employee of the Interested Party.

18. He further stated that, his contact information was to be removed from all Mpesa platforms that the Interested Party manages for its customers when he left employment in 2018.

19. The Complainant avers that it has been nearly five years since he left employment with the Interested Party but he is still receiving calls and

messages about Mpesa paybill reversal requests regarding Mt. Kenya University. He provided screenshots of messages received as proof of this.

20. Additionally, the Complainant states that he is unable to perform his duties using his personal mobile phone number due the number of calls he receives.

21. He alleges that students from Mt. Kenya University are sharing with him their personal information regarding their registration numbers and payment of school fees and that there are instances where he is verbally abused because he can not help them with the reversal requests since they were given his contact information by the Respondent's agents.

22. Further, the Complainant stated that his contact information was removed from all other Mpesa platforms except Mt. Kenya University, when he left employment with the Interested Party in 2018 upon request by the Interested Party to the Respondent.

23. Finally, the Complainant prayed for compensation for the numerous disturbances caused bearing in mind that he needed to switch off his phone to get some peace and relief which in some instances made him lose potential business.

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

24. The Respondent responded to the complaint filed against it via a letter dated 30<sup>th</sup> November, 2023.

25. In its response, the Respondent stated that it collected and recorded the Complainant's details on account of his employment with the Interested Party, in line with the requirements of the operation of an aggregated till/paybill. The Respondent adduced the terms and conditions for operation of paybills and tills as proof of the same.

26. The Respondent stated that the terms and conditions are clear on the responsibility for addition and removal of paybill administrators, which

responsibility is on the operator of the paybill. In this case, the responsibility was on the Interested Party to remove the Complainant as an administrator of the paybill.

27. Further, the Respondent stated that it had not received any notice of change in employment circumstances of paybill administrators and did not have this information in the instant case, therefore it could not reasonably be expected to have made any changes to the system records.

28. The Respondent stated that it shares the contact number associated with a paybill for a reversal claim if requested by a customer in accordance with the processes in place. It reiterated that it does not initiate or complete reversals on organisations' behalf unless it is in receipt of express instructions from the said organisations through email or official letter.

29. Further, the Respondent confirmed that it has no such instructions to date from the Interested Party.

30. Additionally, and following receipt of the complaint, the Respondent stated that it has reached out to the Interested Party to make the necessary changes on the system, to remove the Complainant as the contact person for operation of the paybill, and is following to ensure this is resolved.

### **III. THE INTERESTED PARTY'S RESPONSE**

31. The Interested Party filed its response via a letter dated 30<sup>th</sup> November, 2023.

32. In its response, the Interested Party stated that the Complainant was a former employee of the Bank who worked between the period of 15<sup>th</sup> March, 2011 to 8<sup>th</sup> May, 2018 and provided a copy of the employment contract between the Complainant and itself as proof.

33. The Interested Party averred that all personal data collected from the Complainant was done for the explicit, specified and legitimate purpose of his employment. Furthermore, the said data was only limited to what was

necessary for his role and the Complainant was made aware of the purpose for which his data would be utilized and explicit consent given. The Interested Party produced a signed copy of the instruction letter sent to the Respondent, with the Complainant's signature appended, as proof of the same.

34. The Interested Party stated that all employees, upon resignation, are deactivated from its systems as part of the Bank's exit process given the sensitive nature of the Bank's business. Similarly, the Complainant was also exited in this manner and is evidenced as he is no longer referenced as its Mpesa Business Administrator.

35. Further, the Interested Party stated that they have requested the Respondent to erase the Personal Identifiable Information (PII) of the Complainant *via* a letter dated 28<sup>th</sup> November, 2023 which they provided as proof.

36. The Interested Party stated that the legal basis for processing of the Complainant's information is that the Complainant was duly notified and consent given as stipulated under Section 29 of the Act on the intention to share the Complainant's details with the Respondent. This was on voluntary basis for performance of a contract in which the Complainant was representing the Interested Party as its employee at the time.

37. In response to the question of how the Interested Party fulfils the Complainant's right of rectification and erasure as per Section 40 of the Act, the Interested Party stated that it has provided contact information that data subjects can utilize to exercise their right of rectification and erasure and that the contact is shared to all stakeholders publicly on its website as part of its Privacy Policy Notice.

38. Finally, the Interested Party produced the Data Processing Agreement it had with the Respondent.



## **E. ISSUES FOR DETERMINATION**

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

- i. Whether there was a violation of Complainant's rights under the Act; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

### **I. WHETHER THERE WAS A VIOLATION OF COMPLAINANTS' RIGHTS UNDER THE ACT**

40. The Complainant is a data subject with rights under Section 26 the Act. Moreover, the Complainant has the right to deletion of false or misleading data about him as provided for under Section 26 (e) of the Act.

41. The Complainant, while employed by the Interested Party, was a paybill administrator for Mt. Kenya University. Upon resignation, he exercised his right to deletion of his personal data by contacting the Respondent via phone call and requesting to be removed as a paybill administrator for Mt. Kenya University.

42. According to the terms and conditions for operation of paybills and tills, the responsibility for addition and removal of paybill administrators is on the operator of the paybill. In this case, that was the Interested Party. The Complainant ought to have notified the Interested Party that he was still receiving calls and messages from Mt. Kenya University students requesting reversal of payments made through Mpesa paybill so that the Interested Party can then relay the same information to the Respondent and request for his removal/deletion as an administrator of the paybill.

43. The Respondent indicated that it was not notified by the Interested Party of the change in employment circumstances of the Complainant and therefore it could not reasonably be expected to have made any changes to its system records. No evidence was adduced by the Complainant or the Interested Party to prove that the Interested Party had notified the Respondent of the Complainant's

resignation from employment and thus the Respondent's statement remains uncontroverted.

44. Further, the Office while carrying out its investigations, requested the Complainant for proof that he reached out to the Interested Party to request for his removal as a paybill administrator. No evidence was provided of any request made to the Interested Party to remove him as a paybill administrator. The first port of call for the Complainant was to inform the Interested Party that he was still receiving calls and messages regarding reversals by one of its clients. The Interested Party, after receiving the request for removal/deletion as a paybill administrator, would then inform the Respondent and make the request for removal/deletion of the Complainant's details as per its terms and conditions for operation of paybills and tills.

45. The Complainant was aware of the procedure for removal as a paybill administrator as he clearly stated in his complaint that *"... Kindly note, my contact information was removed from all other Mpesa platforms except Mt. Kenya University when I left Guaranty Trust Bank Kenya Ltd in 2018 upon request by the bank to Safaricom."*

46. The Interested Party upon being notified by the Office of the complaint, took remedial measures by requesting the Respondent to erase the Complainant's personal data and remove the Complainant as an administrator of the paybill. This was done *via* a letter dated 28<sup>th</sup> November, 2023.

47. The right of rectification and erasure as espoused in Section 40 (1)(b) of the Act provides that a data subject may request a data controller to erase, without undue delay, personal data that the data controller is no longer authorised to retain. It was upon the Complainant to exercise his right with the Interested Party and request for deletion of the information.

48. From the foregoing, the Office finds that there was no violation of the Complainant's right to deletion of false or misleading data about him as he did

not make a request to the Interested Party who had the responsibility of removing him as an administrator of the paybill.

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

49. Having found that the Complainant's rights were not violated and noting that the Interested party swiftly and in a timely manner took steps to remedy the situation upon being made aware of it, the Office finds that the Complainant is not entitled to any remedies under the Act and the Regulations.

**F. FINAL DETERMINATION**

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

- i. The Complaint is hereby dismissed.
- ii. 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**