



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1837 OF 2023

BARRACK MANONO SHIRONYE..... COMPLAINANT

-VERSUS-

EQUITY BANK KENYA LTD.....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 complaint concerns the Respondent's purported violation of the Complainant's right to privacy in disclosing personal information to a debt collector even after the Complainant had settled his debt with the Respondent.
2. The Respondent has otherwise refuted these claims on the grounds that neither by its actions nor that of its agents has it occasioned an infringement on its clients right to privacy.

B. LEGAL BASIS

3. 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 'the Act') was enacted.
4. 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.

5. Section 8 (f) of the Act provides that the Office of the Data Protection Commissioner (hereinafter '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.

C. BACKGROUND OF THE COMPLAINT

6. The Office received a complaint by Barrack Manono Shironye (hereinafter 'the Complainant') on 29th September 2023 pursuant to Section 56 of the Act and Regulation 14 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. Equity Bank Kenya Ltd (hereinafter the 'Respondent') is a financial institution regulated by the Central Bank of Kenya and the Complainant is its client.
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it *vide* a letter dated 21st August, 2023 referenced ODPC/CONF/1/5 VOL 1 (382) 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 it by the Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. The legal basis relied upon to continue processing and sharing the Complainant's data as per section 30 of the Act
 - d. Whether it has a data sharing contract or agreement with the third-party companies as per Regulation 21 of the Data Protection (General) Regulations 2021,

- e. Whether it can summarily resolve the complaint to the satisfaction of the Complainant through alternative dispute resolution mechanisms
 - f. Demonstration of how it balances the rights and freedoms of the data subject *vis-à-vis* your internal policies and procedures
9. The Respondent responded to the notification of complaint letter *vide* a letter dated 30th October, 2023.
10. This determination is therefore as a result of analysis of the complaint as received, the responses from the Respondent and investigations conducted by the Office.

D. NATURE OF COMPLAINT

11. On or about September 29th 2023, the Complainant states that debt collectors, agents of the Respondent herein, contacted him with regard to a defaulted loan. The Complainant states that he did not have any outstanding loans with the Respondent and that the debt collectors were outright harassing him.
12. The Complainant further states that the Respondent violated his right to privacy by sharing his personal data with the debt collectors with no due cause.

E. RESPONDENT'S RESPONSE

13. The Respondent, *vide* letter dated 30th October, 2023 provided a response to the allegations against it.
14. The Respondent states that its aware of the Complainant's complaint. It further avers that the complaint arose from a text message sent by a debt collecting company, an agent of the Respondent to the Complainant demanding repayment of its loan.
15. The Respondent states that upon receipt of the notification of the complaint, it undertook a review of the matter and established that the Complainant had a loan facility taken on or about 24th October 2022 that fell into arrears and as per the Respondent's banking practice, rules and regulations, the Complainant's details were submitted to the debt collecting agency for further recovery of the loan balance.

16. The Respondent further avers that on or about August 31st, 2023 it received a repayment of the overdue loan and balance from the Complainant.
17. The Respondent also states that in its investigations, it found that on or about September 29th 2023 the Complainant received a follow-up debt repayment message from the debt collectors.
18. The Respondent however avers that it notified the debt collectors of its client's loan clearance. The Respondent proceeds to attach an email as to this effect.
19. On its end, the Respondent states that its firm in its compliance with the Act and the Data Protection Regulations and that it did not occasion through its acts, or otherwise a privacy breach on the Complainant.

F. SUMMARY OF EVIDENCE ADDUCED

I. THE COMPLAINANT'S EVIDENCE

20. The Complainant, as part of his evidence submitted:
- a) screenshots of a text message received from *EliteDBTmgt* an entity identified as Elite Debt Management by the Respondent asking him to repay his debt to the Respondent.

II. THE RESPONDENT'S EVIDENCE

21. The Respondent, attached the following evidence:
- a) the information about the Complainant and the loan in arrears submitted to the debt collectors for recovery
- b) emails notifying and updating the debt collectors on the status of the loans outsourced and those that have been re-paid
- c) Data processing agreement – Svanna Financial Services and Elite Debt Recovery
- d) Equity Bank (Kenya) Limited Debt Collectors & Investigators Service Level Agreement

G. ISSUES FOR DETERMINATION

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22. 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 the Respondent infringed on the Complainant's right to privacy according to the Act;
- ii. Whether the Respondent has sufficiently demonstrated compliance with the Data Protection Act with regards to the Complainant's issues; and;
- iii. Whether the Complainant is entitled to the remedies sought for the alleged breach.

I. WHETHER THE RESPONDENT INFRINGED ON THE COMPLAINANT'S RIGHT TO PRIVACY ACCORDING TO THE ACT

23. 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*

24. 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*

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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

25. According to section 25 it is the Respondent's duty to ensure that the Complainant's data is processed in accordance with the right to privacy, that the data which has already been collected is 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. It is also the Respondent's duty to keep the data collected and processed kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected.

26. According to Section 25 of the Act and with regard to the Complainant's issues herein, 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 lastly that every reasonable step has been taken to ensure that any inaccurate personal data is erased or rectified without delay.

27. The Complainant had initially defaulted a loan which he had taken with the Respondent which resulted in the Respondent submitting his details to debt recovery agents. He however cleared the defaulted loan but the debt recovery agents still erroneously contacted him to repay the already settled loan.

28. The Respondent acknowledged that an error was made, however insisted that communication to the debt recovery agents had been promptly done and it was the debt collecting agency's responsibility to ensure that their records are updated. The debt recovery agent contacted the Complainant without proper authority from the Respondent regardless of prior communication to close the Complainant's file.

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29. The Office observes that, in reference to the evidence submitted by the Respondent, the Respondent effectively communicated to the debt recovery agency and at the point of contact, the Complainant's file stood as closed. The Respondent upheld and protected the Complainant's right to privacy as per the Act.

30. In view of the foregoing, the Office finds that the Respondent did not infringe on the complainant's right to privacy.

II. WHETHER THE WHETHER THE RESPONDENT HAS SUFFICIENTLY DEMONSTRATED COMPLIANCE WITH THE DATA PROTECTION ACT IN REGARDS TO THE COMPLAINANT'S ISSUES

31. Section 3 of the Data Protection Act gives the object and purpose of this Act as:

- a. to regulate the processing of personal data*
- b. to ensure that the processing of personal data of a data subject is guided by the principles set out in section 25*
- c. to protect the privacy of individuals*
- d. to establish the legal and institutional mechanism to protect personal data; and*
- e. to provide data subjects with rights and remedies to protect their personal data from processing that is not in accordance with this Act*

32. Section 25 provides the principles of data protection; that 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*

33. In its Response, the Respondent states that it relies on Section 30(b) (i)(ii) of the Act as the legal basis to continue processing and sharing the Complainant's data.

34. Also, as per the requirement under Regulation 21 of the Data Protection (General) Regulations, 2021, the Respondent has an established data sharing agreement with its debt recovery agencies and the same was provided as evidence to the Office.

35. The Respondent further states that in its commitment to complying with the Data Protection laws and regulations, it has developed and implemented Data Privacy Policies and Procedures, tools to process and support data subject rights, training on the Data Protection Act and Regulations, appointment of data protection officers, conducted privacy impact assessments, data mapping and lastly, the Respondent has deployed various safeguards including data classification tools that enable its staff to classify data based on its sensitivity.

36. In view of the foregoing, with regard to the Respondent's response, and cooperation the Office finds that the Respondent has sufficiently demonstrated compliance with the Act with regards to the complainant's issues.

III. WHETHER THE COMPLAINANT IS ENTITLED TO THE REMEDIES UNDER THE ACT

37. The complainant sought for an award of compensation against the Respondent owing to the alleged infringement of his right to privacy, claiming that the Respondent shared his personal details with a third party without just cause.

38. Section 40 of the Act 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.*

39. Regulation 7(1) of the Data Protection (General) Regulations, 2021 provide that a data subject has a right to request a data controller or data processor to restrict the processing of their personal data on grounds that –
- a. the data subject contests the accuracy of their personal data*
 - b. the personal data has been unlawfully processed and the data subject opposes the erasure and requests restriction instead*
 - c. the data subject no longer needs their personal data but the data controller or data processor requires the personal data to be kept in order to establish, exercise or defend a legal claim; or*
 - d. a data subject has objected to the processing of their personal data under regulation 8 and a data controller or data processor is considering legitimate grounds that override those of the data subject.*
40. This Office has considered the merits of the Complaint and the Response of the Respondent and the evidence adduced. From the initial receipt of the Complainant's complaint, steps undertaken by the Complainant and the Respondent.
41. The Office has also considered all the rights of the data subject vis-à-vis the responsibility of the Respondent with regard to the issues in contention herein.
42. The Office observes that according to the Act and Regulations, and all the rights provided for a data subject with regard to their personal data, the Complainant did not exhaust all his options prior to reaching out to the Office on a claim of privacy infringement.
43. The Office further notes that the Complainant has not demonstrated *vide* evidence adduced any merit on his claim of infringement of his right to privacy by the Respondent.

44. In view of the foregoing, the prayer for compensation against the Respondent is denied.

H. FINAL DETERMINATION

45. 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 against Equity Bank Kenya Ltd is dismissed.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within 30 days.

DATED at **NAIROBI** this 15th day of December, **2023**



**Immaculate Kassait, MBS
DATA COMMISSIONER**