



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 1933 OF 2023**

**GLADYS JEPKOECH KEMBOI.....COMPLAINANT**

**-VERSUS-**

**DIAMOND TRUST BANK.....1<sup>ST</sup> RESPONDENT**

**JUBILEE INSURANCE COMPANY LIMITED.....2<sup>ND</sup> 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 Office received a complaint on 5<sup>th</sup> October 2023 against the 1<sup>st</sup> Respondent regarding an alleged infringement of the Complainant's personal data.

**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 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 premised 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 5<sup>th</sup> October 2023. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was the aggrieved data subject.
7. The 1<sup>st</sup> Respondent is a Bank, licensed by the Central Bank of Kenya while the 2<sup>nd</sup> Respondent is an insurance company in Kenya.
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the 1<sup>st</sup> Respondent of the complaint filed against it *vide* a letter dated 6<sup>th</sup> November 2023 referenced **ODPC/CONF/1/5 VOL 1 (532)**. In the notification of the complaint, the 1<sup>st</sup> Respondent was informed that if the allegations by the Complainant were true, they were in violation of various Sections of the Act. Further, the Respondents were asked to provide this Office with the following:
  - a. A response to the allegation made against them by the Complainant;
  - b. Any relevant materials or evidence in support of the response;
  - c. The mitigation adopted or being adopted to address the complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint do not take place again; and
  - d. The contractual agreement (if any) between you and the Complainant allowing you to share her personal data with third parties.
9. The 1<sup>st</sup> Respondent responded to the notification of complaint letter *via* a letter dated 22<sup>nd</sup> November, 2023 and, in their response, they requested that the complaint be resolved through Alternative Dispute Resolution (ADR).

10. This request was made pursuant to Section 9 (1) (c) of the Act, Regulation 15 of the Enforcement Regulations and the ADR Guidelines published by this Office.
11. As the ADR process is party based, the Complainant was requested for consent to resolve the dispute through mediation or conciliation. The Complainant agreed to attempt to resolve the dispute through the aforementioned methods of ADR.
12. Despite attempts to resolve the dispute through ADR, the complaint was not resolved and therefore, the dispute was referred back to this Office for determination as per Regulation 15 (8) of the Enforcement Regulations which provides that where the complaint is not determined through ADR, the Data Commissioner shall proceed to determine the complaint as provided for in the Act and the Regulations.
13. Further, during investigations conducted by this Office, it became apparent that the 2<sup>nd</sup> Respondent was significantly involved in the complaint. Therefore, pursuant to Regulation 12 of the Enforcement Regulations, the Data Commissioner enjoined the 2<sup>nd</sup> Respondent as a respondent in the complaint vide a letter dated 19<sup>th</sup> December 2023 referenced **ODPC/CONF/1/5/VOL 1 (650)** and notified them of the complaint in the same letter.
14. The 2<sup>nd</sup> Respondent failed to respond to the above letter.
15. This determination is pegged on the provisions of Regulation 15 (8) above and Regulation 14 of the Regulations which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

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

16. The Complainant stated that she is a holder of account 5XXXXXX001 with the 1<sup>st</sup> Respondent's Eldoret Branch and that sometime in April 2022, she visited the Bank with the intention of opening a savings account.
17. That while at the Bank, their employee approached her and informed her of an insurance package offered by Jubilee insurance. The Complainant then had reservations with getting the insurance but proceeded to sign a blank document

and assured the employee that as soon as she discusses the matter with her husband, she will grant express consent to enrol her for the insurance policy.

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

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

18. The Complainant alleged that the employee proceeded to fill in the insurance forms, attaching her bank account details and her personal details being, copies of Identification Number (ID no.) and KRA Pin which were given to the 1<sup>st</sup> Respondent for purposes of opening her current account.
19. The Complainant stated that the Bank did not inform her of any request to share the said personal details with their employee.
20. The Complainant alleged that due to the breach and infringement of her personal data by the Bank, a standing order was initiated against her account. The insurance policy that she was signed up to without her express consent gobbled up her savings totalling to about Kshs. Five Hundred Thousand (Kshs. 500,000).
21. The Complainant stated that despite numerous protests and communication between her and the 1<sup>st</sup> Respondent's employee to cancel the insurance policy and suspension of the standing order, no action had been taken to remedy the wrong.
22. The Complainant provided screenshots of Whatsapp messages between herself and the 1<sup>st</sup> Respondent's employee.
23. The Complainant inquired about an email she received from the 2<sup>nd</sup> Respondent and the employee indicated that they wanted her to confirm the details. The Complainant then indicated that she did not want to join any insurance.
24. The employee then advised her to write an email for cancellation of the insurance because once she signed the forms, the rest of the procedure is done in the system.
25. This Office, through an email dated 8<sup>th</sup> November 2023 sought information from the Complainant regarding the alleged insurance policy that was signed without her express consent, the alleged standing order and the emails referred to in the Whatsapp chat between her and the sales agent.

26. The Complainant did not provide the above clarifications as sought by this Office.
27. The Complainant prayed that this Office finds the 1<sup>st</sup> Respondent culpable of infringement of her personal data and to order the 1<sup>st</sup> Respondent to cause the reimbursement of the whole amount that was submitted to the 2<sup>nd</sup> Respondent. The Complainant also prayed that the 1<sup>st</sup> Respondent pay for general damages caused by infringement of her personal data and the 1<sup>st</sup> Respondent to pay for costs.

**ii. THE 1<sup>ST</sup> RESPONDENT'S RESPONSE**

28. The 1<sup>st</sup> Respondent was sent a notification on the 6<sup>th</sup> of November 2023 and responded vide a letter dated 22<sup>nd</sup> November 2023.
29. The 1<sup>st</sup> Respondent confirmed that the Complainant visited its Eldoret Branch sometime in April 2022 and in the course of her banking activities, she was informed of life assurance products offered by the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent alleged that the Complainant expressed interest and was attended to by a sales officer of the 2<sup>nd</sup> Respondent stationed at the branch.
30. The 1<sup>st</sup> Respondent stated that the 2<sup>nd</sup> Respondent's sales staff at the time took the Complainant through the various life assurance products and the Complainant agreed to sign up for one of the plans. The product was then sold to her by the 2<sup>nd</sup> Respondent's staff and at no time was the Bank's staff party to the transaction.
31. The 1<sup>st</sup> Respondent stated that the Complainant provided her personal information for purposes of placement of the cover and pointed out that the information provided by the Complainant to the 2<sup>nd</sup> Respondent was above what they hold for its customers or would otherwise require and could have only been provided by the Complainant who thereafter signed the 2<sup>nd</sup> Respondent's life assurance application forms.
32. The 1<sup>st</sup> Respondent provided copies of Application for Life Insurance, Direct Debt Authority (authorizing the debiting of the monthly premiums from the Customer's account), a Need analysis Questionnaire and computation of the Premium Payable and Estimate of Maturity Value all duly signed by the Complainant.

33. The 1<sup>st</sup> Respondent stated that the Complainant was contacted by the 2<sup>nd</sup> Respondent on 1<sup>st</sup> July 2022 which was the effective date of the Policy confirming the placement of the policy and sharing a copy of the policy document. The 1<sup>st</sup> Respondent pointed out that the Complainant responded to the 2<sup>nd</sup> Respondent's email on 5 December 2022 requesting for cancellation of the policy.

The 1<sup>st</sup> Respondent provided copies of the said emails.

34. The 1<sup>st</sup> Respondent pointed out that the email correspondences and Whatsapp conversations were between the sales officer of the 2<sup>nd</sup> Respondent and the Complainant to its exclusion which is in itself an acknowledgement that the Complainant was aware that the Bank was not a party to the transaction.

35. The 1<sup>st</sup> Respondent claimed that the funds debited from the Complainant's account with the Bank were debited and remitted to the 2<sup>nd</sup> Respondent pursuant to the direct debit instructions signed by the Complainant which was not contested.

### **iii. THE 2<sup>ND</sup> RESPONDENT'S RESPONSE**

36. The 2<sup>nd</sup> Respondent was sent a notification of the complaint on the 19<sup>th</sup> of November 2023 giving them strict timelines to respond to the complaint due to the statutory timelines also imposed upon this Office to resolve and determine complaints.

37. The 2<sup>nd</sup> Respondent did not respond to the said notification.

## **F. ISSUES FOR DETERMINATION**

38. In light of the above, 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 COMPLAINANT'S RIGHTS UNDER THE ACT**

39. The Complainant as a data subject is entitled to the rights stipulated under the Act, specifically Section 26 (a) of the Act to be informed of the use to which her personal data was to be put.

40. Her allegations that the 1<sup>st</sup> Respondent gave out her personal information to the sales agent of the 2<sup>nd</sup> Respondent were not sufficiently proven. She was requested to provide additional documents as proof of her allegations which she failed to do.
41. The Complainant alleged that the employee/sales agent of the 2<sup>nd</sup> Respondent signed up an assurance policy without her express consent. Evidence submitted by the 1<sup>st</sup> Respondent indicate that she filled up all the necessary forms to sign up for the policy. The employee/sales agent of the 2<sup>nd</sup> Respondent would not have access to all that information that was in the application form, for instance, the Complainant's family history and information regarding her family members, and her height and weight. The Complainant did not prove that this information indeed, did not come from her and the employee/sales agent of the 2<sup>nd</sup> Respondent had access to this information and filled the forms on her behalf without her consent.
42. The 1<sup>st</sup> Respondent proved that it did not have sufficient information to share with the 2<sup>nd</sup> Respondent for purposes of signing up the assurance policy without the consent of the Complainant.
43. Moreover, this Office was only interested in determining whether the Complainant's privacy rights were infringed by the Respondents and whether her personal details were shared with the 2<sup>nd</sup> Respondent without her consent. The Office did not concern itself with the cancellation of the assurance policy and/or whether it was a valid policy or not, as that goes beyond the mandate of this Office.
44. In that regard, it is the finding of this Office that the Complainant's rights under the Act were not infringed upon or violated by the Respondents.

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

45. 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. The Complainant requested for several orders from this Office.

46. Owing to the analysis above, the 1<sup>st</sup> Respondent is not liable for infringement of the Complainant's personal data.

47. With regards to reimbursement, the Complainant did not provide sufficient proof of the amount submitted to the 2<sup>nd</sup> Respondent and moreover, she submitted a 'Direct Debt Authority' to the 1<sup>st</sup> Respondent. This Office cannot therefore order a reimbursement of the stated amount and directs the Complainant to lodge a complaint with relevant authorities with regards to reimbursement of the Kshs. 500,000.

48. As the 1<sup>st</sup> Respondent has been found not liable, general damages shall not be ordered against it.

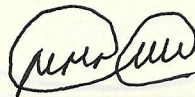
49. This Office does not make orders as to costs.

#### **G. FINAL DETERMINATION**

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

- i. The Respondents were not liable for violation of the Complainant's rights or their obligations under the Act;
- ii. The complaint is dismissed for lack of merit; and
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 2<sup>nd</sup> day of January 2024.



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**IMMACULATE KASSAIT, MBS**  
**DATA COMMISSIONER**