



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 2194 OF 2023

ABUBAKAR HUSSEIN.....COMPLAINANT

-VERSUS-

CERES TECH LIMITED T/A CHAPAA LOAN.....RESPONDENT

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 lodged against Ceres Tech Limited (hereinafter as 'the Respondent') relates to the alleged contacting of the Complainant by the Respondent regarding a loan he was unaware of and had not consented to be listed as a guarantor.

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;

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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 premised on the provisions of Regulation 14 of the Data Protection (Complaints 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 Abubakar Hussein (hereinafter as 'the Complainant') dated 27th October 2023, against Ceres Tech Limited. This is pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations.
7. The Respondent is a digital credit provider that lends money to its customers through its mobile application '**Chapaa Loan**'.
8. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the Complaint filed against it *vide* a letter dated 22nd November, 2023 and reference number ODPC/CONF/1/5 VOL 1(582). The Respondent was required to respond within 14 days of receipt of the letter. 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;
 - d. The standard contract that it has with the Complainant, if any;
 - e. Details of how it obtains, stores and processes personal data, and whether the Complainant consented to the processing of his 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 in writing of the technological and organizational safeguards that have been put in place to ensure that such occurrence mentioned in the complaint does not take place again; and
 - h. Demonstration (by way of written statement) of its level of compliance with the requirements under the Act and the Regulations. In particular, an elaborate representation of how data subjects can exercise their rights in relation to data protection.
9. The Respondent put in its response to the complaint *via* a letter dated 4th December, 2023.
10. This determination is therefore as a result of analysis of the complaint as received, the response by the Respondent and investigations conducted by the Office.

D. SUMMARY OF EVIDENCE ADDUCED

I. THE COMPLAINANT'S CASE

11. The Complainant alleged that he has been receiving calls from a company (the Respondent) claiming that a person by the name of Nilesh took a loan and put his number as a guarantor.

12. The Complainant stated that he doesn't know who Nilesh is and that he has never dealt with anyone named Nilesh.

13. The Complainant further alleged that he was being harassed by the mobile phone numbers 0740****17 and 0792****30 which belong to the Respondent and/ or its agents. He provided screenshots of his call logs as proof of the allegations made.

14. The Complainant avers that he blocked the above mobile phone numbers but the Respondent still contacted him using other numbers namely; 0723****03, 0707****63 and 0748****62.

II. THE RESPONDENT'S RESPONSE

15. The Respondent, *via* a letter dated 4th December 2023, responded to the Notification of complaint. The Respondent did not address the issues raised in the complaint by the Complainant, and as it stands, the allegations made against it remain uncontroverted.

E. ISSUES FOR DETERMINATION

16. Having considered the nature of the complaint and the evidence adduced by the parties to the complaint, it is not in dispute that the Respondent contacted the Complainant regarding a loan that he had not consented to be enlisted as a guarantor.

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

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

I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

18. Section 26 (a) of the Act provides for the right to be informed of the use to which a data subject's personal data is to be put. The Respondent, by not informing the Complainant of the use to which his personal data was to be put, at the point of collection of the personal data, violated his right to be informed. The Respondent collected the mobile phone number of the Complainant from its customer and did not inform the Complainant that his personal data was being collected. The Respondent did not also inform the Complainant that his mobile phone number was being collected for the purpose of being enlisted as a guarantor to a loan.

19. Section 26 (c) of the Act provides for the right to object to the processing of personal data. The Complainant objected to the further processing of his personal data and even blocked the mobile phone numbers of the Respondent. Despite having objected to the further processing of his personal data, the Respondent still contacted him using other mobile phone numbers that he hadn't blocked and therefore violated the Complainant's right to object to the processing of his personal data.

20. The Respondent did not provide any evidence to dispute the fact that the numbers that contacted the Complainant belonged to the Respondent and/or its agents.

21. This Office therefore finds that the Complainant's rights under Sections 26 (a) and 26 (c) of the Act were violated by the Respondent.

II. WHETHER THE RESPONDENT HAD OBLIGATIONS TO FULFIL UNDER THE ACT

22. The Respondent had an obligation under Section 25 of the Act to ensure that the Complainant's personal data is, amongst others:

- i. processed in accordance with their right to privacy;

- ii. processed lawfully, fairly and in a transparent manner in relation to the data subjects;
- iii. collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes; and
- iv. collected only where a valid explanation is provided whenever information relating to private affairs is required.

23. In collecting personal data, the Respondent is mandated by Section 28 (1) of the Act to collect the data directly from the data subject. Section 28 (2) sets out instances where personal data may be collected indirectly. The Respondent did not demonstrate that any of the conditions set out in Section 28 (2) were relevant in this matter.

24. Further, Section 29 of the Act provides an obligation to data controllers or data processors of the duty to notify the data subject. Notably, the data subject has to be informed of, *inter alia*;

- i. rights specified under Section 26;
- ii. the fact that personal data was being collected;
- iii. the purpose of collection of their personal data;
- iv. the third parties whose personal data has been or will be transferred to, including details of the safeguards adopted; and
- v. a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data.

25. The Respondent had a duty to notify the Complainant of his rights under the Act, the fact that his mobile phone number was being collected for purposes of enlisting him as a guarantor to a loan, and the measures it has in place to ensure the safety of his personal data. The Respondent failed to fulfil this obligation under Section 29 of the Act.

26. Section 30 of the Act states that a data controller or data processor shall not process personal data unless the data subject consents to the processing for one or more specified purposes. The Respondent failed to prove that it had

obtained prior consent from the Complainant before processing his personal data.

27. Further, Section 32 of the Act places the burden of proof on the Respondent for establishing a data subject's consent to the processing of their personal data. This burden was not discharged by the Respondent as it did not prove that it had obtained Consent from the Complainant before processing his personal data.

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


28. The Office notes that the Respondent is a repeat offender having been found liable for similar violations of the Act in ***ODPC COMPLAINT NO. 1593 OF 2023 – BENEDICT NYAGA VS. CERES TECH LIMITED T/A CHAPAA LOAN***. An Enforcement Notice was issued in the aforementioned matter, which was not complied with. Consequently, a Penalty Notice shall issue to the Respondent.

F. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. A Penalty Notice to issue to the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 24th day of January 2024.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

