REPUBLIC OF KENYA

OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 3024 OF 2026

ELIZABETH NJOKI .....COMPLAINANT

-VERSUS-

PI CAPITAL LTD .....1ST RESPONDENT

TWIGA FOODS LTD.....2ND 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 Complainant lodged a complaint alleging that the Respondents irregularly processed her personal data leading to her being listed as a defaulter with three credit reference bureaus.

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 as '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(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. BACKGROUND OF THE COMPLAINT

6. This Office received a complaint from the Complainant on 3rd August 2026. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, who was an aggrieved data subject.

7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against them *vide* a letter dated 2nd August, 2026 and referenced ODPC/CIE/CON/2/1 VOL.2 (724). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondent was asked to provide this Office with the following:

    a. A response to the allegations made against them by the Complainant;

    b. Any relevant materials or evidence in support of their response above;

    c. The Contractual agreement between themselves and the Complainant;

    d. Whether the Complainant was notified pursuant to Section 29 and whether she consented to the processing of her data;

e. The KYC documentation that was sued to process the alleged loan;

f. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant; and

g. Any other relevant information they wish the Office to consider.

8. The 1st Respondent submitted to the Office a Response to the Notification of Complaint.

9. The 2nd Respondent, through its advocates, informed this Office on 6th October, 2026 that the 2nd Respondent had been placed under Administration. As a result, the Office could not sustain any legal process on the 2nd Respondent in the Complaint.

10. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.

11. This determination is therefore as a result of analysis of the complaint as received and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

12. It is the Complainant's assertion that the Respondent irregularly processed her personal data leading to her being listed a s a defaulter with the credit reference bureaus.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

13. The Complainant stated that on 2nd October 2025, she applied for a loan from a financial institution, but the application was declined on the grounds that she had allegedly been negatively listed with the Credit Reference Bureaus (CRBs) as a loan defaulter. She averred that the information caused her considerable alarm and distress as she had always serviced her loans diligently and had never defaulted on any credit facility.

14. Consequently, she requested credit reference reports from all three CRBs, namely *Creditinfo*, *TransUnion Credit* and *Metropol*. Upon reviewing the reports dated 2nd

October 2025, she discovered that the Respondent had allegedly listed her as a defaulter under an alleged loan reference number 4*****6, with an opening date of 9th March 2025, classified as a mobile banking loan facility in the amount of KES *****, with alleged past due days of 185 and an alleged outstanding amount of KES *****.

15. The Complainant stated that she had never applied for, been approved for, received, or consented to any credit facility from Bayes Limited. She further stated that she had never entered into any loan agreement with Bayes, never owned or operated the mobile number +2547******3 to which the alleged loan was purportedly disbursed, and had never downloaded or used the Bayes mobile application on any of her devices.

16. She stated that, apprehensive that her identity may have been used fraudulently, she contacted her mobile service provider, which allegedly confirmed that the said mobile number had never been registered under her national identification details.

17. The Complainant averred that on 2nd October 2025, she wrote to the Respondent disputing the CRB listing and requesting details and documentation supporting the alleged loan and the processing of her personal data. She stated that the Respondent responded by requesting her mobile number and identity card details. However, owing to her concerns regarding possible impersonation, fraud, and unlawful collection of her personal data, she declined to provide the requested information until the Respondent explained the necessity for such data. According to the Complainant, the Respondent failed to provide adequate reasons despite several exchanges between the parties. She further stated that she only provided anonymized information because the responses from the Respondent were generic and insufficient.

18. The Complainant further stated that due to the delay and manner in which Bayes handled her complaint, she issued a demand letter dated 7th October 2025 seeking, *inter alia*, a complete digital contract and consent trail proving her explicit consent to the alleged loan agreement, including the IP address, IMEI number and phone number used in the application process; the full Know Your

Customer (KYC) documentation used to process the alleged loan together with proof that the same matched her government issued identification documents; and proof that the mobile number +2547*****3 was registered in her name at the time of disbursement. She also demanded correction and removal of all allegedly false information created against her.

19. The Complainant stated that the Respondent responded through a letter dated 14th October 2025, alleging that she had taken four loans under the *"Twiga Foods Buy Now, Pay Later Program"* and that the fourth loan remained unpaid, thereby occasioning the CRB listing. She averred that the Respondent further claimed that the information had been cross-listed, verified and confirmed with Twiga Foods and that the listing complied with all applicable regulations.

20. The Complainant maintained that she had never taken any loans from either the Respondent or Twiga Foods and considered the response to be fundamentally flawed and indicative of a failed verification process. She further contended that she had never been notified of the negative listing either before or after it was put in effect as required under the Banking (Credit Reference Bureau) Regulations, 2020.

21. The Complainant further stated that the Respondent urged her to repay the alleged loan in order for the CRB records to be updated. She maintained that she again wrote to Bayes on the same day denying the allegations and reiterating her request for complete loan application forms, proof of explicit consent, KYC verification records, and proof that the funds had been disbursed into an account registered and operated by her.

22. She averred that the requested information had never been provided. According to the Complainant, the Respondent's reliance on an unsubstantiated verification process involving a third party, without availing the underlying proof to her, violated her right of access to information under Section 26 of the Data Protection Act and demonstrated that her personal data had been processed on the basis of inaccurate and unverified information.

23. The Complainant further stated that the personal data processed by the Respondent was fundamentally inaccurate and processed without any lawful

basis, thereby amounting to violations of Sections 25, 28 and 31 of the Data Protection Act, 2019. She alleged that the Respondent failed to ensure the accuracy, completeness and reliability of the data processed and further failed to process her data lawfully, fairly and transparently.

24. The Complainant additionally stated that she contacted Twiga Foods in order to understand its business process and was informed that customers were ordinarily required to open accounts, establish a trading relationship and undergo business assessments before being considered for credit facilities. She averred that she had never engaged with Twiga Foods, opened an account with the company, used its "Buy Now Pay Later" program, purchased any goods from the company, or interacted with the company through any vendor or agent. Consequently, she disputed any processing of her personal data by Twiga Foods and reiterated her request for supporting documentation from the Respondent, which she stated was never provided.

25. The Complainant stated that on 20th October 2025, she was informed that the Respondent had deleted all information relating to the alleged loan and had requested the CRBs to expunge the listing. However, she alleged that the CRBs had not received the necessary file from the Respondent to remove the entry until much later, when one of the CRBs eventually shared an updated report dated 27th October 2025. She further averred that no satisfactory explanation had ever been provided regarding how and why her personal data had been processed.

26. The Complainant further stated that due to the distress and concern occasioned by the Respondents' conduct, she initially lodged a complaint with the Office on 9th November 2025, seeking investigations and a determination on the matter. She averred that thereafter, the Respondent contacted her by telephone proposing a meeting to explore the possibility of resolving the dispute through Alternative Dispute Resolution (ADR), and she requested that the proposal be communicated in writing.

27. She stated that on 21st January 2026, she received an email from the Respondent proposing an ADR meeting and seeking confirmation of her availability. According to the Complainant, it was her understanding that attendance at the meeting did

not amount to consent to have the dispute referred to ADR, but merely to discuss whether ADR would be appropriate.

28. The Complainant alleged that the Respondent subsequently wrote to the Office and misrepresented the position by indicating that she had already agreed to pursue ADR, and attached an ADR application form falsely suggesting that she had consented to the referral of the matter to ADR. She stated that the Office thereafter contacted the parties seeking to divert the matter to ADR, but she rejected the proposal through an email dated 28th January 2026 and expressly requested the Office to proceed with the complaint to conclusion.

ii. THE 1ST RESPONDENT'S RESPONSE

29. The Respondent submitted a response to the notification in which they averred as follows:

30. The Respondent stated that they operate a mobile lending platform under the brand name Bayes. They averred that they are duly registered with the Office of the Data Protection Commissioner as a data controller and are fully conversant with the provisions of the Data Protection Act and the attendant regulations.

31. The Respondent further stated that they strictly adhere to privacy safeguards in the processing of customers' personal data as set out in its privacy policy hosted on its mobile application and website.

32. The Respondent explained that they are engaged in the business of providing credit facilities to successful loan applicants either directly through its platform or through partnerships with other service providers. They stated that in furtherance of their objective of providing financing to small business traders, it entered into a partnership agreement with Twiga Foods Limited on 1st September 2024 for purposes of implementing a "Buy Now Pay Later" initiative intended to assist Twiga Foods vendors to access credit facilities.

33. The Respondent described Twiga Foods Limited as a business-to-business marketplace that sources products from farmers and manufacturers and delivers them to urban retailers and vendors. They stated that the relationship between themselves and Twiga Foods was governed by a Partnership Agreement and a

Data Processing Agreement. According to the Respondent, Twiga Foods was the data controller in respect of the Complainant's personal data, while Bayes acted as a data processor.

34. The Respondent averred that Twiga Foods bore sole responsibility for collecting vendors' personal data, including names, phone numbers, copies of national identification cards, business names and locations, and for obtaining and recording the vendors' explicit consent prior to sharing such data with them for credit risk assessment and loan processing purposes. They further stated that under Clause 4.9 of the Partnership Agreement and Data Processing Agreement, Twiga Foods was obligated to obtain and record consent from vendors before disclosing their personal data to the Respondent.

35. The Respondent stated that under the arrangement, any approved loan facility was disbursed directly to Twiga Foods through its pay bill account in settlement of goods purchased by vendors under the "Buy Now Pay Later" project. They added that vendors were thereafter required to repay the loan facility to Bayes and that in the event of default, the Respondent was entitled to pursue debt recovery measures, including listing defaulting borrowers with licensed Credit Reference Bureaus in accordance with the Credit Reference Bureau Regulations and Central Bank of Kenya guidelines.

36. The Respondent further stated that the processing of personal data relating to the subject loan account was based on lawful grounds under Section 30 of the Data Protection Act. They asserted that the processing was necessary for the performance of a contract involving the provision of credit facilities to vendors purchasing goods from Twiga Foods. They additionally contended that the processing was necessary for legitimate interests relating to credit risk management and debt recovery, as well as compliance with legal obligations imposed under the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022 and the Credit Reference Bureau Regulations, 2020.

37. The Respondent averred that sometime in March 2025, Twiga Foods shared with them the vendor details for credit appraisal purposes, namely the name Elizabeth Njoki, phone number 07****3 and national identification card number *******.

They stated that pursuant to the partnership agreement, the Respondent undertook credit scoring and confirmed the vendor's credit limit to Twiga Foods, following which the Respondent disbursed KES **** directly to Twiga Foods on 10th March 2025.

38. The Respondent stated that the loan subsequently fell into arrears, prompting them to commence debt collection processes and issue pre listing notices to the phone number 07****3. They clarified that all communications concerning the debt, including pre-listing notices, were sent to the said phone number and not directly to the Complainant, and that all attempts at communication remained unanswered.

39. The Respondent further stated that upon expiry of the pre-listing notice period, they proceeded to submit the identification card number ******* for listing with the Credit Reference Bureaus in accordance with the Credit Reference Bureau Regulations, 2020.

40. The Respondent maintained that the identification card number had been obtained from Twiga Foods during the vendor onboarding process and that they processed the same in accordance with the Data Processing Agreement executed between the parties. The Respondent contended that they processed and submitted the information believing it to be accurate, as Twiga Foods, being the data controller, was contractually and legally obligated to ensure the accuracy and lawful processing of the personal data.

41. The Respondent further asserted that they had established notification mechanisms intended to inform data subjects of the collection and processing of personal data, the categories of data collected, the purpose of processing, applicable security safeguards, and the rights available to data subjects under the Data Protection Act. They stated that such particulars were contained in the Bayes Privacy Policy accessible through its mobile application and website. The Respondent reiterated that Twiga Foods, as the data processor responsible for onboarding vendors, bore the obligation of notifying vendors and obtaining their express consent prior to disclosing their personal data to them.

42. The Respondent stated that on 2nd October 2025, they received an email from the Complainant alleging that she had been wrongly listed with the Credit Reference Bureaus in relation to a loan she had never applied for. They averred that upon receipt of the complaint, they initiated an internal forensic review to determine whether there had been identity fraud or a data mismatch.

43. According to the Respondent, investigations established that the vendor onboarding process had been undertaken by Twiga Foods using standard KYC procedures in accordance with the partnership arrangement. However, upon further review of the vendor information, Bayes allegedly discovered a possible case of identity theft, in that the Complainant's identification number ***** had been linked to another vendor account bearing the name A******e W****i and phone number 07*****3.

44. The Respondent stated that upon discovery of the suspected identity theft, they proceeded to delist the Complainant's identification number from all Credit Reference Bureaus and informed the Complainant of the delisting. They further stated that they deleted all personal information relating to the Complainant from their records. The Respondent additionally averred that they escalated the matter internally for further investigations and intended to lodge a formal complaint with the Directorate of Criminal Investigations against the suspected fraudster upon completion of the investigations.

45. The Respondent maintained that the processing of the Complainant's identification number arose from an isolated case of fraud and identity theft, which they considered to be a criminal matter under the Penal Code, rather than unlawful processing of personal data. They further stated that they had established a Privacy Policy and Customer Complaint Policy through which data subjects could access information regarding their rights and available complaint-handling mechanisms, including communication channels through email and telephone contacts.

46. The Respondent further stated that following receipt of the Complainant's complaint, they had delisted the Complainant from all Credit Reference Bureau records and ensured that all financial records relating to the alleged Bayes loan

had been expunged from the CRB databases in order to prevent further financial harm. They additionally stated that they had deleted the Complainant's personal information from their internal database and would no longer process the same.

47. The Respondent further averred that they had strengthened their data verification mechanisms to ensure more rigorous and accurate cross verification of data received from prospective partners. They stated that they had also updated their layered privacy notices in compliance with Sections 29 and 30 of the Data Protection Act and implemented mandatory data processing notifications through SMS links and application-based tick-box confirmations requiring data subjects to confirm that they had read and understood the privacy notices before any processing activity could occur.

48. The Respondent further stated that they had reviewed their partnership agreements and data processing agreements to ensure compliance with the Data Protection Act and to enhance lawful processing of customers' personal data.

49. In conclusion, the Respondent maintained that they lawfully processed the Complainant's personal data for legitimate business purposes. They further contended that they were not the data controller in relation to the Complainant's personal data and that Twiga Foods, as the data controller, ought to bear responsibility for the impugned processing activities.

F. ISSUES FOR DETERMINATION

50. In light of the above, the following issues fall for determination by this Office:

    i. Whether there was unlawful processing of the Complainant's personal data;

    ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS UNLAWFUL PROCESSING OF THE COMPLAINANT'S PERSONAL DATA

51. The Complainant alleged that her personal data, including her identification card number, was processed and submitted to Credit Reference Bureaus in relation to

a loan facility she neither applied for nor consented to. The 1st Respondent, Pi Capital Limited t/a Bayes Limited, admitted that the Complainant's identification number was processed and subsequently listed with the CRBs, but attributed the processing to information shared by the 2nd Respondent, Twiga Foods Limited, during vendor onboarding and to an alleged case of identity theft.

52. Pursuant to Section 2 of the Act, a data controller is a person who determines the purpose and means of processing personal data, while a data processor processes personal data on behalf of a data controller. From the material presented, both Respondents undertook distinct and independent processing activities in relation to the Complainant's personal data.

53. The 2nd Respondent allegedly collected, verified, and shared the Complainant's personal data for onboarding into the "Buy Now Pay Later" program, while the 1st Respondent undertook credit scoring, loan processing, debt collection, and CRB listing. Consequently, both Respondents exercised control over various stages of the processing activities and are therefore individually accountable for compliance with the Data Protection Act within their respective processing mandates.

54. The 1st Respondent sought to shift responsibility to the 2nd Respondent by asserting that the 2nd Respondent was solely responsible for collecting the Complainant's data and obtaining consent prior to disclosure. However, the 1st Respondent admitted that it independently relied on the personal data received to conduct credit risk assessment, disburse credit facilities, pursue debt collection, and undertake CRB listing. These activities amounted to substantive processing decisions undertaken by the 1st Respondent in its own capacity. Accordingly, the 1st Respondent cannot avoid liability by attributing the source of the data to the 2nd Respondent.

55. Section 25(a) and (b) of the Act requires personal data to be processed lawfully, fairly, and transparently, and collected for explicit, specified purposes.

56. Further, Section 30 of the Act stipulates 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.

57. The 1st Respondent admitted that it independently relied on the personal data received to conduct credit risk assessment, disburse credit facilities, pursue debt collection, and undertake CRB listing. The 1st Respondent was enjoined to ensure they established a lawful basis for each processing activity. They did not.

58. This Office therefore finds that the Respondent failed to establish a lawful basis to process the Complainant's personal data.

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

59. 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.

60. Section 65 of the Act provides 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. The Section indicates that damage included financial loss and damage not involving financial loss including distress.

61. Further, Regulation 14 (3) (e) of the Enforcement Regulations provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

62. In considering whether to issue compensation, this Office takes into consideration the fact that the unlawful processing of the Complainant's personal data resulted in distress as she was unlawfully listed on CRB. In this context, the 1st Respondent is hereby ordered to pay the Complainant **Kenya Shillings One Hundred Thousand (KES 100,000)** for unlawful processing of personal data.

63. In addition, the Office notes that the 2nd Respondent, Twiga Foods Limited, was placed under administration and as such, a complaint cannot be sustained as against Twiga Foods Limited. No findings can therefore be made as against the 2nd Respondent, Twiga Foods Limited.

G. FINAL DETERMINATION

64. The Data Commissioner therefore makes the following final determination: -

i. The 1st Respondent is hereby found liable.

ii. The 1st Respondent to pay the Complainant a sum of **Kenya Shillings One Hundred Thousand (KES 100,000)** as compensation.

iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 6th day of November 2026.

IMMACULATE KASSAIT, SC, MBS
DATA COMMISSIONER