REPUBLIC OF KENYA

OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 3161 OF 2026

LINDA ADEKA ALUVALE.....COMPLAINANT

-VERSUS-

NATION MEDIA GROUP PLC.....1ST RESPONDENT

BRIAN OBUYA.....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 against Nation Media Group Limited (the 1st Respondent) and Brian Obuya (the 2nd Respondent), alleging the unlawful and unauthorized disclosure of personal data, specifically her personal mobile telephone number in a documentary titled *"How three women blackmailed former D.light CEO Nick Imudia to death/Murder Tapes SSN3 EP13"* on its YouTube channel, the Nation App, and later broadcast it on NTV and promoted it on its official X (formerly Twitter) account.

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 13th 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 Respondents of the complaint filed against them *vide* a letter dated 28th August 2026 and referenced ODPC/CIE/CON/2/1 VOL 2 (596) and ODPC/CIE/CON/2/1 VOL 2 (598). In the notifications of the complaint, the Respondents were 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 allegations made against them by the Complainant;

b. A contact person who can provide further details with regards to the Complaint;

c. Any relevant materials or evidence in support of the response;

d. The contractual agreement with the Complainant, if any;

e. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, including but not limited to the take-down of the documentary from all platforms.

f. Any other information for the Office to consider.

8. In view of the above, the Office received a response to the Notification dated 9th October 2026 from the Respondents.

9. The Office further received a rejoinder from the Complainant on the 16th October 2026 in response to the Respondents' response.

10. This determination is therefore as a result of analysis of the complaint as received, the response by the Respondents and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

11. The Complainant lodged a complaint against Nation Media Group Limited (the 1st Respondent) and Brian Obuya (the 2nd Respondent), alleging the unlawful and unauthorized disclosure of her personal data, specifically her personal mobile telephone number in a documentary titled *"How three women blackmailed former D.light CEO Nick Imudia to death/Murder Tapes SSN3 EP13"* on its on its YouTube channel, the Nation App, and later broadcast it on NTV and promoted it on its official X (formerly Twitter) account.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

12. The Complainant alleges that on or around 13th May 2026, the 1st Respondent published a documentary titled *"How three women blackmailed former D.light CEO Nick Imudia to death/Murder Tapes SSN3 EP13"* on its YouTube channel, the Nation App, and later broadcast it on NTV and promoted it on its official X

(formerly Twitter) account on 14th May 2026 thereby exposing her personal data to a wide audience.

13. The Complainant further alleges that the 2nd Respondent obtained her telephone number from private and privileged WhatsApp communications between herself and the late Nick Imudia, which were retrieved from his personal computer. She contends that neither Respondent informed her of the intended publication or obtained her consent to disclose her personal data.

14. The Complainant further alleges that in that documentary, the Respondents unlawfully published and disclosed her personal mobile telephone number (072*****74) without her consent. The number was visible in screenshots of WhatsApp conversations between the Complainant and the late Mr. Imudia.

15. The Complainant maintains that the disclosure was deliberate, unnecessary and disproportionate, particularly because the personal telephone numbers of other individuals referenced in the documentary were not disclosed. She further alleges that following the publication, she received unsolicited telephone calls and WhatsApp messages from unknown persons, some of which were insulting, threatening and harassing, thereby raising concerns about her personal safety.

16. The Complainant states that although the 1st Respondent subsequently blurred her telephone number in the documentary uploaded on its YouTube channel, the number remains visible in the documentary preview published on its X account. She contends that the subsequent redaction did not remedy the initial unauthorized disclosure, given that the documentary and its broadcast had already reached millions of viewers.

17. The Complainant consequently alleges that the Respondents violated her right to privacy under Article 31 of the Constitution of Kenya and the principles of data protection under Section 25 of the Data Protection Act, 2019. She also alleges infringement of her rights as a data subject under Section 26 of the Act.

18. The Complainant seeks orders directing the Respondents to remove the documentary and all versions, previews and excerpts containing her personal data from their platforms, take appropriate measures to recover or remove the

disclosed personal data, pay compensation for the alleged harm suffered, and be subjected to the applicable enforcement measures under the Data Protection Act, 2019. She further states that despite issuing a demand through her advocates, the Respondents have failed to respond.

ii. THE RESPONDENTS' RESPONSE

19. The Respondents, Nation Media Group PLC and Brian Obuya, through their advocates, filed a response dated 9th October 2026, opposing the Complaint and raising two preliminary objections on the jurisdiction of the Office.

20. First, the Respondents contend that the Office lacks jurisdiction under Section 56(5) of the Data Protection Act, 2019, on the ground that the Complaint was initially lodged on 15th May 2026 and that the ninety-day statutory period expired on 13th August 2026, when the Complaint was resubmitted. They argue that resubmission of the same complaint on identical facts cannot revive the statutory period.

21. Secondly, the Respondents contend that the processing falls within the journalistic exemption under Section 52(1)(b) of the Act. They argue that the documentary concerned the death of a prominent business executive and allegations of blackmail preceding his death, matters which they considered to be of significant public interest. They further maintain that the publication was undertaken in accordance with their editorial code of ethics and the constitutional protections of freedom of expression and media independence under Articles 33 and 34 of the Constitution.

22. On the substance of the Complaint, the Respondents acknowledge that the Complainant's mobile telephone number was visible for a few seconds at two timestamps in the documentary published on YouTube and the Nation App on 13th May 2026, and in the subsequent NTV broadcast on 14th May 2026. They maintain, however, that the number appeared incidentally within reproduced electronic communications, without the Complainant's name or any accompanying identification linking the number to her. They further acknowledge that the number remained visible in the preview posted on their X account due to an operational oversight, which they regret.

23. The Respondents contend that the communications reproduced in the documentary were obtained from the late Nick Imudia's electronic devices in the course of an investigation into matters of public concern. They maintain that the collection of the information was permissible under Section 28(2) of the Act and that the processing was based on legitimate interests under Section 30(1)(b)(vii), rather than consent. They further argue that advance notification to the Complainant was impracticable and incompatible with the journalistic investigation.

24. Regarding the alleged infringement of the data protection principles, the Respondents maintain that the telephone number was not deliberately disclosed, commercially exploited or used for any secondary purpose. The Respondents also claim that the continued visibility of the number on the X platform was an "operational oversight." They nevertheless acknowledge that its visibility was not necessary for the journalistic purpose and state that it was redacted upon becoming aware of the issue. They submit that the information constituted personal data but not sensitive personal data within the meaning of Section 2 of the Act.

25. The Respondents dispute liability for the alleged harassment and threatening messages received by the Complainant. They argue that the messages originated from unidentified third parties and that the Complainant has not established a causal link between the alleged harm and the publication of her telephone number. They further contend that no request had been made by the Complainant to exercise her rights under Section 26 of the Act prior to lodging the Complaint.

26. As remedial measures, the Respondents state that they have redacted the telephone number from the documentary on their YouTube channel and the Nation App, undertaken to review their platforms, archives and syndicated copies to ensure that no unredacted version remains accessible, and offered a formal undertaking against further publication of the Complainant's telephone number.

27. The Respondents consequently urge the Office to uphold their preliminary objections, find that the processing was undertaken for journalistic purposes and

in the public interest, decline to issue enforcement or penalty notices, and reject the remedies sought by the Complainant. In the alternative, they express willingness to resolve the matter through mediation, negotiation or conciliation under Regulation 15 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021.

iii. COMPLAINANT'S REJOINDER

28. In response to the Respondents' response, the Complainant submitted a rejoinder dated 16th October 2026, highlighting material admissions and legal counter-arguments.

29. On the issues of admissions by the Respondents, the rejoinder identifies four key admissions attributed to the Respondents: Her telephone number was visible and legible in the documentary, its legibility was unnecessary for the program's journalistic purpose, neither Respondent sought or obtained her consent and the Respondents' subsequently took steps to redact the number. The Complainant argues that these admissions narrow the dispute as the central question is not whether disclosure occurred, but whether it was legally justified.

30. On jurisdiction, the Complainant submits that the complaint was lawfully resubmitted following directions issued by the ODPC after the original complaint fell outside the statutory timelines. She argues that reinstatement of complaints is recognized by both the High Court in *Gichuhi & 2 others v Data Protection Commissioner; Mathenge and another (interested parties) Judicial Review E028 of 2023* and the ODPC's own precedent in *Shakunt R. Shah v Prime Bank Limited (ODPC Complaint 1615 of 2023).*

31. The Complainant further explains that she initially complained on 15th May 2026, supplied additional information on 5th August 2026, and resubmitted the complaint on 13th August 2026 following the ODPC's express instructions. The Complainant's position is that she should not be prejudiced for complying with those directions, and that the complaint should proceed on its merits. Accordingly, the Complainant urges the Office to dismiss the Respondents' preliminary objection and determine the matter on its merits.

32. On the applicability of the journalistic exemption, the Complainant contends that the Respondents cannot rely on the journalistic exemption under Section 52(1) of the Data Protection Act because they have admitted that publication of her mobile telephone number was not necessary for the journalistic purpose of the documentary. She argues that the Respondents have failed to demonstrate any public interest served by disclosing her personal telephone number and that the exemption cannot justify unnecessary disclosure of personal data. The Complainant further distinguishes the *Faith Wavinya* determination cited by the respondents, arguing that her complaint specifically concerns disclosure they acknowledge was unnecessary for their journalistic purpose.

33. With regards to disclosure of her personal data, the Complainant argues rejects the argument that the number's brief appearance, without an accompanying name or explicit identification, reduced the significance of its publication. She maintains that the surrounding WhatsApp conversations made it possible to link the number to her. To illustrate the publication's reach, she cites more than 609,000 YouTube views as at 5th August 2026, a national television broadcast, and more than 18,000 views of a promotional preview on X. These figures are presented as evidence of substantial exposure across multiple platforms, rather than merely a momentary disclosure.

34. On the identification of her personal mobile telephone number, the Complainant states that she received unsolicited calls and messages containing insults, threats and harassment after publication. She also refers to a stranger who allegedly told her that they had obtained her number from the documentary, supporting her argument that viewers could identify and contact her. The rejoinder further challenges the Respondents' description of the number's continued visibility on X as an *"operational oversight and not a deliberate act."* She argues that an oversight does not excuse non-compliance and questions whether their safeguards and corrective measures were adequate.

35. On the issue of consent and alternative lawful grounds for processing, the Complain maintains that her telephone number is personal data and disputes any suggestion that professional use or possible public availability justified

unrestricted publication. She invokes the constitutional right against unnecessary revelation of private affairs and the Act's requirements for lawful processing. The Complainant also cited the High Court decision in *Muthoni v Sophia Kenya Limited t/a Sista Kenya (Civil Appeal E164 & 178 of 2024 (Consolidated) (2025)KEHC 34 (KLR)* where the court emphasized that processing without consent under Section 30 constitutes an offence.

36. Although the respondents reportedly rely on legitimate interests rather than consent, her response is that they have not shown why publishing the number was necessary for those interests. She points to its subsequent redaction without altering the documentary's substance as evidence that their journalistic objectives could have been achieved without disclosure.

37. On principles of data protection, the rejoinder alleges breaches of the principles of privacy, lawful and fair processing, purpose limitation, and data minimization. Its main argument is that publishing information admittedly unnecessary to the documentary was inconsistent with the requirement to limit personal data to what the purpose required. The Complainant also states that the number appeared in WhatsApp communications between herself and the late Nick Imudia, which she characterizes as confidential and protected by advocate–client privilege.

38. On Alternative Dispute Resolution, the Complainant avers that an earlier attempt to resolve the matter amicably, through her letter of 14th May 2026, received no response. Given the elapsed time and stage of proceedings, she favours a conclusive ODPC determination over further alternative dispute resolution. She asks the ODPC to find that the disclosure was unlawful and grant the remedies requested in her original complaint

39. The Complainant asks the Office to find that the Respondents unlawfully disclosed her personal mobile telephone number, contrary to the Data Protection Act, and to grant the remedies sought in the complaint.

F. ISSUES FOR DETERMINATION

40. Having considered the Complaint, the Respondents' response, the Complainant's rejoinder and the evidence on record, the following issues arise for determination:

    i. Whether ODPC has jurisdiction to determine the complaint;

    ii. Whether the Respondents' processing and publication of the Complainant's mobile telephone number qualifies for the journalistic exemption under Section 52(1) of the Act;

    iii. Whether the Respondents lawfully processed the Complainant's personal data; and

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

I. WHETHER ODPC HAS JURISDICTION TO DETERMINE THE COMPLAINT

41. The Respondents, Nation Media Group PLC and Brian Obuya, through their advocates, filed a response dated 9th October 2026, opposing the Complaint and raising two preliminary objections on the jurisdiction of the Office. The first concerns the statutory period for investigating and concluding complaints under section 56(5) of the Act, while the second concerns the applicability of the journalistic exemption under section 52(1) of the Act.

a) Objection 1: Jurisdiction and the resubmitted complaint

42. Section 56(5) of the Act requires the Office to investigate and conclude a complaint within ninety days. The Respondents contend that the statutory period commenced on 15th May 2026, when the original Complaint was lodged, and expired on 13th August 2026, when the Complaint was resubmitted. They argue that the Office cannot revive an expired statutory period by inviting a complainant to resubmit a complaint founded on identical facts.

43. The Respondents rely on *Gichuhi & 2 Others v Data Protection Commissioner; Mathenge & Another (Interested Parties)* [2023] KEHC 17321 (KLR), in which the High Court considered the consequences of the expiry of the statutory period

under section 56(5). They further rely on Regulations 6(5) and 8(4) of the Enforcement Regulations, contending that resubmission is permissible only in circumstances expressly provided for under those provisions.

44. The Complainant, on the other hand, submits that the resubmission was undertaken pursuant to directions issued by the Office and should not operate to extinguish her statutory right to lodge a complaint. She relies on the same decision in *Gichuhi & 2 Others v Data Protection Commissioner*, as well as the Office's determination in *Shakunt R. Shah v Prime Bank Limited* (ODPC Complaint No. 1615 of 2023).

45. The Office has considered the parties' submissions and the applicable legal framework. In *Regus Kenya Limited v Data Protection Commissioner & Another* [2025] KEHC 13491 (KLR), the High Court, exercising supervisory jurisdiction, considered the operation of the ninety-day period under section 56(5) of the Act and the significance of admission of a complaint and commencement of investigations. The Data Commissioner is guided by the interpretation adopted by the High Court in the referenced decision, namely that the statutory period must be considered in the context of the admission of a complaint and the commencement of the investigative process, rather than treating the initial receipt of an incomplete complaint as automatically triggering the 90-day timeline.

46. In the present matter, the evidence demonstrates that the initial complaint had not been admitted for investigation against the Respondents. On 3rd August 2026, the Office was still seeking additional information necessary to facilitate its admission and investigation. Further, the Respondents were not notified of the said Complaint No. 2032 of 2026 and were therefore not parties to an admitted complaint under investigation at that stage.

47. In any event, the Office observes that section 56 of the Act confers upon every data subject the right to lodge a complaint with the Office. That right should not be construed as having been extinguished merely because an earlier complaint, which had not been admitted or determined, was affected by the administrative process of the Office. In *Gichuhi & 2 Others v Data Protection Commissioner*, the

High Court recognized the importance of preserving access to the complaints mechanism and directed that the complaint in question be readmitted for fresh investigation.

48. Further, Regulations 6(5) and 8(4) of the Enforcement Regulations address particular circumstances relating to the decline of complaints and withdrawal of complaints, respectively. They do not expressly prohibit the resubmission of a complaint that was not admitted or determined, particularly where the resubmission was undertaken following directions issued by the Office. The Respondents have not demonstrated that those provisions extinguish the Complainant's statutory right in the circumstances of this case.

49. The Data Commissioner therefore finds that the Complainant should not be prejudiced for complying with the Office's directions to resubmit the Complaint. The present Complaint was admitted on 13th August 2026 and is properly before the Office for determination.

50. In view of the foregoing, the first preliminary objection is hereby dismissed.

b) Objection 2: Section 52 of the Act as a bar to jurisdiction

51. The Respondents further contend that where the journalistic exemption under section 52(1) of the Act applies, the Office lacks jurisdiction to investigate or determine the Complaint. In support of this position, they rely on *Faith Wavinya v Nation Media Group* (ODPC Complaint No. 2648 of 2023), determined on 20th March 2024.

52. The Data Commissioner reiterates that Section 52(1) provides for an exemption from the application of the principles of processing personal data where the conditions stipulated therein are satisfied.

53. Further, section 51(1) of the Act preserves certain fundamental data protection obligations, providing that nothing in the Act exempts a data controller from complying with the principles of lawful processing, minimization of collection, data quality and the adoption of appropriate safeguards. Consequently, even where the exemption under section 52 is established, the obligations expressly preserved under section 51(1) remain applicable.

54. In the present Complaint, the Complainant alleges that the Respondents unlawfully disclosed her personal telephone number and that the disclosure was unnecessary for the journalistic purpose of the documentary. She further alleges violations of the data protection principles in relation to disclosure of her personal data. The Office is therefore required to examine the evidence and determine whether the conditions for the journalistic exemption were satisfied and whether the obligations preserved under section 51(1) were complied with.

55. The Data Commissioner further observes that previous determinations of the Office are persuasive but do not preclude the consideration of subsequent complaints on their individual facts and circumstances. Accordingly, to the extent that *Faith Wavinya v Nation Media Group* may be interpreted as establishing that section 52 removes the Office's jurisdiction altogether, including in respect of obligations preserved under section 51(1), that interpretation is not adopted.

56. Importantly, the present Complaint is distinguishable because the Respondents expressly acknowledge that displaying the Complainant's telephone number was unnecessary for the journalistic purpose and that the number could be redacted without affecting the substance of the documentary.

57. Accordingly, the Data Commissioner finds that section 52 does not oust the jurisdiction of the Office in the circumstances of this Complaint. The second preliminary objection is therefore dismissed, and the Office shall proceed to determine the Complaint on its merits.

II. WHETHER THE RESPONDENTS' PROCESSING AND PUBLICATION OF THE COMPLAINANT'S MOBILE TELEPHONE NUMBER QUALIFIES FOR THE JOURNALISTIC EXEMPTION UNDER SECTION 52(1) OF THE ACT.

58. Section 52 of the Act provides for exemptions in relation to journalism, literature and art as follows:

> (1) The principles of processing personal data shall not apply where — (a) processing is undertaken by a person for the publication of a literary or artistic material;

(b) data controller reasonably believes that publication would be in the public interest; and

(c) data controller reasonably believes that, in all the circumstances, compliance with the provision is incompatible with the special purposes.

(2) Subsection (1) (b) shall only apply where it can be demonstrated that the processing is in compliance with any self-regulatory or issued code of ethics in practice and relevant to the publication in question. [Emphasis]

59. The Respondents submit that the documentary was produced for journalistic purposes and concerned a matter of public interest. They contend that section 52 of the Act exempts the processing from the application of the Act and rely on the Office's determination in *Faith Wavinya v Nation Media Group*.

60. However, the existence of a journalistic purpose does not, without more, resolve whether every item of personal data included in a publication qualifies for the exemption under section 52. The statutory conditions must be considered in relation to the particular processing complained of.

61. Section 52(1) provides for an exemption in relation to processing for journalistic purposes, subject to the conditions prescribed therein, including the controller's reasonable belief that publication is in the public interest and that compliance with the relevant provisions would be incompatible with the special purposes.

62. The Data Commissioner notes that the Respondents have demonstrated a journalistic purpose in producing the documentary and the public interest aspect. However, they have expressly conceded that displaying the Complainant's telephone number was not necessary to that purpose. They further state that the number was redacted without affecting the substance or integrity of the documentary.

63. The Data Commissioner finds that the public interest in reporting on the circumstances surrounding the death of the late Mr. Imudia did not necessarily extend to displaying the Complainant's telephone number. The documentary could have communicated its subject matter without exposing the Complainant's personal data.

64. Further, the Respondents have not demonstrated that complying with the relevant data protection obligation, by redacting the telephone number before publication, would have been incompatible with the journalistic purpose. Indeed, their subsequent redaction, while the documentary remained intact, demonstrates otherwise.

65. Moreover, the issue of whether the 1st Respondent's editorial code or the Code of Conduct for Media Practice, 2025 is the code for the purposes of section 52(2) does not in this instance. The Respondents rely on both, and the point does not arise because conditions (b) and (c) fail on the fact that the Respondents admitted that the publication of the Complainant's mobile number was not necessary to the journalistic purpose of the programme and hence was not a public interest justification.

66. The Data Commissioner has further considered *Faith Wavinya v Nation Media Group*. The exemption in that matter must be understood in the context of the facts and the findings made therein. It does not dispense with the need to establish the statutory conditions in every subsequent complaint involving journalistic processing.

67. Accordingly, the Data Commissioner finds that although the documentary was produced for journalistic purposes and addressed a matter of public interest, the Respondents have failed to demonstrate that the specific publication of the Complainant's telephone number satisfied the conditions for exemption under section 52(1) of the Act. The impugned disclosure is therefore not exempt from the relevant data protection obligations under the Act.

III. WHETHER THE RESPONDENTS LAWFULLY PROCESSED THE COMPLAINANT'S PERSONAL DATA

68. In addressing this issue, the Office will answer the following questions:

a. Whether the telephone number constituted personal data.
b. Whether there was a lawful basis for the disclosure of personal data.
c. Whether the Respondents complied with the principles of data protection.

d. Whether there is sufficient evidence to establish individual responsibility on the part of the 2nd Respondent.

a. Whether the telephone number constituted personal data.

69. Section 2 of the Act defines personal data as information relating to an identified or identifiable natural person.

70. The Respondents admit that the telephone number appearing in the reproduced electronic communications was associated with the Complainant. They nevertheless argue that the number was not accompanied by her name or otherwise identified on screen.

71. The Data Commissioner finds that the absence of the Complainant's name does not, in itself, render the number anonymous. The relevant consideration is whether the information relates to an identified or identifiable person, taking into account the context in which it appears and the means reasonably likely to be used to identify that person.

72. In the present case, the number appeared within reproduced WhatsApp conversations and was associated with the Complainant. The Complainant has also demonstrated the contextual link between the number and her identity. The Respondents have not disputed that the number was hers.

73. Accordingly, the Data Commissioner finds that the telephone number constituted personal data within the meaning of section 2 of the Act.

b. *Whether there was a lawful basis for the disclosure of personal data*

74. Section 30(1) of the Act requires a data controller or data processor to process personal data in accordance with a lawful basis prescribed under the Act.

75. The Respondents acknowledge that the Complainant did not give consent to the publication of her telephone number. They rely instead on legitimate interests under section 30(1)(b)(vii) of the Act.

76. The Data Commissioner observes that consent is not the only lawful basis for processing personal data under the Act. A data controller may rely on another applicable lawful basis, including legitimate interests, provided that the

statutory requirements for that basis are satisfied. Where legitimate interests are relied upon, the controller must demonstrate that the processing is necessary for the legitimate interest pursued and that such interest is not overridden by the rights and fundamental freedoms of the data subject.

77. In the present matter, the Data Commissioner acknowledges that the Respondents may have had a legitimate interest in investigating and reporting on the circumstances surrounding the death of the late Mr. Imudia. However, the existence of a legitimate interest in producing the documentary does not automatically justify the disclosure of every item of personal data contained in the underlying material. The specific processing activity in question is the publication of the Complainant's telephone number.

78. The Respondents have not demonstrated how displaying the Complainant's telephone number was necessary to achieve their stated legitimate interest, which override the Complainant's rights and fundamental freedoms. The number was not required to explain the contents of the reproduced communications or to communicate the subject matter of the documentary. Indeed, the Respondents expressly acknowledge that the number was unnecessary and subsequently redacted it without affecting the substance of the publication.

79. The Office therefore finds that the Respondents have failed to demonstrate that the publication of the Complainant's telephone number was necessary for the legitimate interests relied upon under section 30(1)(b)(vii) of the Act. Consequently, the Respondents have not established a lawful basis for the impugned disclosure.

c. Whether the Respondents complied with the principles of data protection

80. Section 25 of the Act sets out the principles governing the processing of personal data. In particular, Section 25(c) of the Act requires personal data to be processed lawfully and transparently. The Respondents were not able to establish the lawful basis relied upon.

81. Further, Section 25(d) requires personal data to be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.

82. The Office has considered the Respondents' admission that the number was visible at two points in the documentary and that its display was not necessary for the journalistic purpose. The Respondents further acknowledge that the number remained visible in the X preview due to an operational oversight.

83. The fact that the number appeared for only a few seconds does not negate the disclosure. Once published, personal data may be viewed, copied, recorded or further disseminated by persons accessing the content. The continued visibility in the X preview further demonstrates that the exposure was not confined to the original version of the documentary.

84. The Data Commissioner finds that the telephone number was not necessary to the purpose of the documentary. Its inclusion therefore exceeded what was necessary for the stated purpose of processing.

85. Accordingly, the Data Commissioner finds that the Respondents were not able to demonstrate the lawful basis relied upon thereby contravening Section 25(c) of the Act. Moreover, the Respondents contravened the data minimization principle under section 25(d) of the Act in relation to the publication of the Complainant's telephone number.

d. Whether there is sufficient evidence to establish individual responsibility on the part of the 2nd Respondent.

86. The Data Commissioner finds that the 1st Respondent, Nation Media Group PLC, was the data controller in respect of the publication of the documentary, as it determined the purposes and means of processing and disseminating the content through its media platforms.

87. The 2nd Respondent, Brian Obuya, was identified as a journalist involved in the production of the documentary. However, the Respondents' response does not sufficiently demonstrate that he independently or jointly determined the purposes and means of processing the Complainant's personal data, or that he personally authorized the disclosure of the Complainant's telephone number.

88. Accordingly, the Data Commissioner finds the 1st Respondent responsible for the impugned processing but makes no separate finding of liability against the 2nd Respondent for want of sufficient evidence of his individual responsibility.

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

89. 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.

90. On Compensation, the Complainant sought for compensation for harm suffered. Section 65 of the Act provides for compensation to data subjects and states, *"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."* Section 65(4) of the Act states that, "*damage includes financial loss and damage not involving financial loss, including distress.*" Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

91. In assessing the appropriate compensation, the Data Commissioner has taken into account the nature of the personal data disclosed, the extent of its exposure, the reach of the publication, the distress demonstrated and the remedial measures subsequently undertaken by the 1st Respondent, including the redaction of the telephone number.

92. The Data Commissioner has also considered the Complainant's account of the unsolicited telephone calls and WhatsApp messages, including the evidence of threatening and insulting communications received following the publication.

93. The Office further notes that the documentary had attracted more than 609,000 views on YouTube as at 5th August 2026, was broadcast on national television and had a promotional preview on X that attracted more than 18,000 views. Having considered all the circumstances, the Data Commissioner directs the 1st Respondent to pay the Complainant **Kenya Shillings Three Hundred Thousand (KES 300,000)** as compensation.

94. Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 contemplates, as a remedy, the issuance of enforcement notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto. On that note, we are guided accordingly and an Enforcement Notice hereby ensues as against the 1st Respondent.

95. The Complainant also sought for orders directing the Respondents to remove the documentary and all versions, previews and excerpts containing her personal data from their platforms, take appropriate measures to recover or remove the disclosed personal data.

96. The Respondents as a result stated that they have taken or propose to take the following measures:

    a. redaction of the telephone number from the programme as published on the 1st Respondent's YouTube channel and the Nation App;
    b. a sweep of all the 1st Respondent's platforms, archives and syndicated copies to confirm that no unredacted version remains accessible; and
    c. a formal undertaking that the identifier will not be republished on any of the 1st Respondent's platforms.

97. In view of the foregoing, having found that the 1st Respondent did not lawfully process the Complainant's personal data, we are guided accordingly and an Enforcement Notice hereby ensues as against the 1st Respondent. The Office will have an opportunity to examine the measures and the proposed measures that the 1st Respondent has alleged to have put in place in relation to this complaint.

98. Furthermore, having found the that the 2nd Respondent is not liable for want of sufficient evidence of his individual responsibility, the complaint against the 2nd Respondent is hereby dismissed.

G. FINAL DETERMINATION

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

i. The 1st Respondents is hereby found liable.

ii. The 1st Respondent is hereby ordered to compensate the Complainant **KES 300,000 (Kenya Shillings Three Hundred Thousand).**

iii. An Enforcement Notice be and is hereby issued against the 1st Respondent.

iv. The Complaint against the 2nd Respondent is hereby dismissed.

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

DATED at **NAIROBI** this 11th day of November 2026.

IMMACULATE KASSAIT, SC, MBS
DATA COMMISSIONER