

# The Data Protection Act does not impose strict liability on Data Controller/Processors; and a Data Subject has a duty to prove loss and/or damage suffered, ODPC rules

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*"The ODPC has buttressed the principle of strict liability imposed on a Data Subject and the legal duty of a Data Subject to prove damage of breach for an award of compensation under the Data Protection Act: **Andrew Endovo V. Standard Investment Bank (S.I.B) (Complaint No. 0697 of 2025)**"*

### BACKGROUND OF THE COMPLAINT

The popular Mansa X singular email that transmogrified into a spirited ODPC Complaint has etched solid legal underpinnings in data breach complaints before ODPC. In this matter, the complainant, lodged a complaint with the Office of the Data Commissioner alleging that Standard Investment Bank (SIB) had unlawfully sent him unsolicited promotional email of the popular online trading Mansa X Special Fund without his consent and in violation of his data protection rights. He therefore sought for hefty compensation against SIB as per its previous decisions.

Upon appointing Wamae & Allen LLP to represent it in the proceedings, SIB responded as follows to the filed complaint:

1. Pursuant to **Regulation 15 of the Data Protection (Complaints Handling Procedures and Enforcement) Regulations, 2021**, SIB had approached the complaint for a negotiated approach to the dispute. However, the complaint declined this adventure despite this framework provided for in the DPA.
2. The complainant had not illustrated any damage suffered, be it financial or non-financial by the single email shared with him as required under **Section 65 DPA**.
3. The DPA does not impose strict liability on a Data Controller/Processors and for a Data Subject to be awarded any form of compensation, such a Data Subject has to prove the damage suffered by breach.
4. The Data Subject has the initial burden of proving the damage suffered before the Data Controller can revert. The Complainant failed to prove any harm or damage suffered and the burden of proof could not shift to SIB.
5. Upon being informed of the email, the Complainant's contact details were removed from all outreach marketing and prospecting records to prevent any further unsolicited communication.
6. A Data Subject cannot be awarded any compensation by merely claiming that there was breach of data but has to prove how he suffered from such breach. In this case, the Complainant had not proved how he suffered by receipt of a single promotional email which was erased upon receipt of the complaint.

### The OPDC determination and holding

Upon considering the issues brought forth by the parties, the OPDC held inter-alia that r Section 65 of the Act requires a complainant to prove damage suffered which can be a financial loss or any form of distress as the Act does not imposes strict liability on Data Processor/Controller.

The ODPC thus awarded the Complainant Kshs.50,000.00 noting that SIB had taken mitigation measures including deleting the complainant's personal data from its database and offering an undertaking not to share further unsolicited emails to the Complainant.

### CONCLUSION

The decision has reaffirmed that compensation is not automatic as it hinges on proving actual harm or distress, however minimal by the Complainant. A Data Subject cannot merely be awarded hefty damages by merely alleging data breach as such Data Subject has a duty to prove damage and/or harm suffered, either financial or non-financial under Section 65 of the Act before being compensated. Further where a Data Controller/Subject has mitigated the breach, the ODPC will be unlikely to award hefty damages.

This case also demonstrates that even a single unsolicited email, sent without lawful basis or adequate notice, constitutes a breach of data rights under Sections 26(a) and 26(c) of the DPA. The award of Kshs. 50,000.00 in case reflects a measured balance recognizing the breach, acknowledging the corrective action taken by SIB, and underscoring that compliance with data protection laws is not optional but essential in maintaining public trust in the digital world.

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