

ODPC DETERMINATIONS, 2023–2026

# The grace period is over

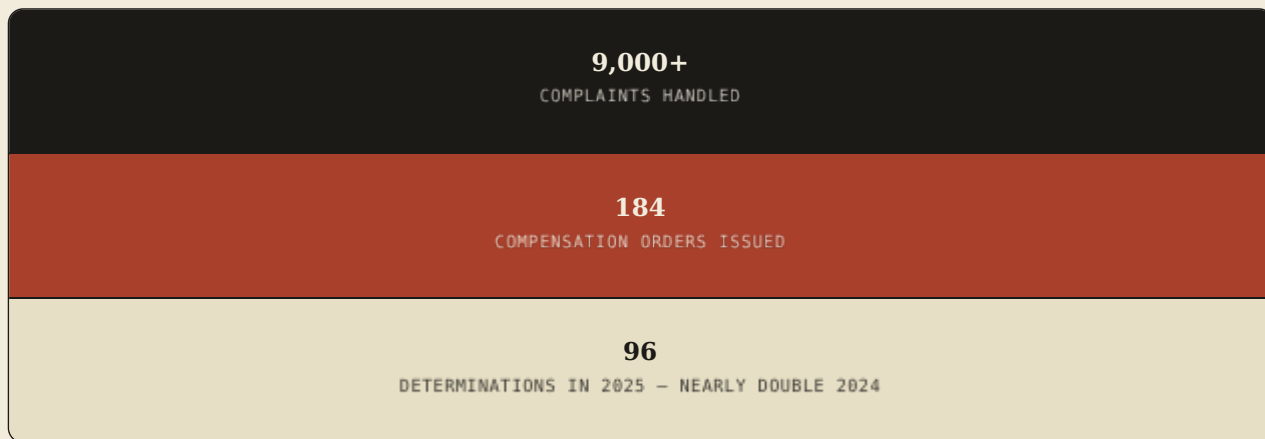
Kenya's data protection regulator has moved from advisory oversight to active sanction — fines in the millions, compensation orders, and now recommendations to prosecute company directors. Here's what the case law is actually telling businesses to fix.

ANALYSIS8 MIN READENFORCEMENT & CASE LAW

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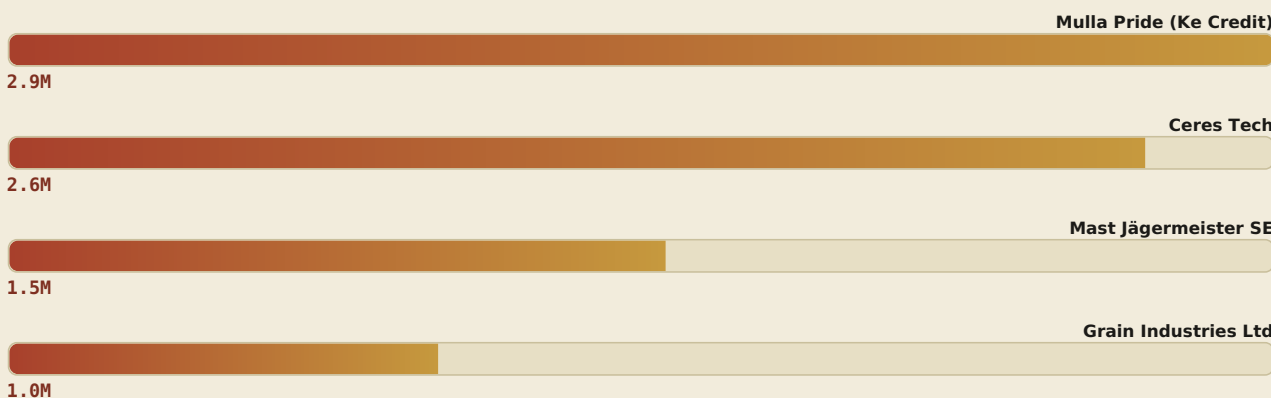
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The Office of the Data Protection Commissioner has entered a decisive enforcement phase. The regulator is no longer testing how compliance is drafted on paper — it is testing how it operates in practice, and the volume of determinations is accelerating fast.



## §1 What recent fines actually looked like

Eight determinations, ranked by penalty. The pattern: marketing and image-use violations dominate, and digital lenders are taking the heaviest hits.



950K

500K

250K

200K

Figures in KES · compensation and penalty amounts as reported in ODPC determinations, 2024–2025

## §2 Eight enforcement trends, in the cases themselves

Expand each docket for the case, the finding, and the practice point to act on.

01

### Implied consent doesn't count anymore

Chizzy Taabu Orwa & 2 Others v Mast Jägermeister SE

KES 1.5M

—

Event disclaimer notices arguing attendees consented by entering and posing for photos were rejected outright — disclaimers inform, they don't substitute for clear affirmative consent. Also established: the controller carries the burden of proving consent was obtained, consent must be documented (oral consent alone isn't enough), and consent for one purpose doesn't stretch to a different one.

#### PRACTICE POINT

If you can't produce a record showing how and when consent was given, the ODPC treats it as never having been obtained.

02

### Image and likeness is now its own enforcement category

Grain Industries v Mbuvi · Fatuma Hadi Ali v Nova Pioneer · Michael's Bouquet

KES 500K–1M

+

03

### Rights on paper aren't rights in practice

Wananchi Group (Zuku Fibre) · YA v Wananchi Group Kenya Ltd

Enforcement notice

+

04

### Digital lenders are the biggest single target

Ceres Tech · Mulla Pride (Ke Credit) · EM v Rosky Credit · Complaint 1966 of 2024

KES 200K–2.9M

+

05

### Legitimate purpose still has to be proportionate

Nderitu & Mureithi v Karungo & Waweru · Various finance-sector determinations

Disproportionate processing

+

06

### You own your agents' mistakes

Waweru & Bolo v Platinum Credit · ODPC v Tools for Humanity (Worldcoin)

KES 250K + criminal exposure

+

07

### Directors are now personally exposed

Eric Munene Njuguna v Chapeo Capital (ZK Pesa) · Wananchi Group

Prosecution recommended

+

08

### Children's data gets the strictest reading

Fatuma Hadi Ali v Nova Pioneer Kenya Limited

KES 950K

+

*"Where a controller cannot prove consent, they are deemed not to have obtained it at all." — the ODPC's standing position across recent determinations.*

## §3 Seven fixes to make now

Not a five-year plan — these are the gaps the ODPC is actually finding, in the order they tend to surface.

01

### Audit consent mechanisms

If you can't prove it, the ODPC treats it as never obtained. Oral consent must be recorded or confirmed in writing.

02

### Operationalise data subject rights

An unmonitored inbox is not a compliant access, rectification or erasure channel.

03

### Review marketing practices

Express consent for image use specifically — and respect the expiry date you agreed to.

04

### Audit third-party relationships

You're liable for agents and processors. Execute compliant DPAs and keep exercising oversight, not just at signing.

05

### Apply the proportionality test

Necessity, least intrusive means, and data minimisation — before processing starts, not after a complaint.

06

### Cooperate fully with the regulator

Obstruction and delay now escalate straight to prosecution recommendations.

## Document cross-border transfers

As Kenya moves toward Malabo Convention accession, map your flows and prepare safeguards now.

### §4 The audit regime taking shape

The proposed Data Protection Compliance Audit Regulations, 2024 formalise how audits get triggered — complaints, investigations, risk assessments, breach notifications, or the ODPC acting on its own initiative.

☰ Maintain Records of Processing Activities (ROPA)

🔒 Review privacy and security controls

🕒 Test incident response capabilities

✓ Deploy efficient DSAR processes

🔄 Review third-party agreements

☆ Document lawful bases for processing

### §5 The bottom line

Every trend above traces back to the same test: does the mechanism actually work when a data subject or a regulator tries to use it? Policies that exist only on paper — unmonitored inboxes, disclaimer notices standing in for consent, agent relationships with no oversight — are exactly what recent determinations have punished. The cost of building this properly is real. The determinations above show what the alternative costs.

#### KEY TAKEAWAY

The ODPC is **testing how compliance operates in practice** — not how it reads in your policy document. That's the single sentence to carry into your next internal audit.

#### HOW THIS TOUCHES YOUR DATA PROTECTION EXPOSURE

Active enforcement means the cost of getting compliance wrong is no longer theoretical — fines, compensation orders, and even recommendations to prosecute directors are now live outcomes, not remote risks.

**Muchangi Patrick & Co. Advocates** helps organisations run data protection audits, fix compliance gaps before the ODPC finds them, and respond if an enforcement notice or complaint has already landed. If you're unsure where your business stands, now is the time to check.

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#### TALK TO US

Muchangi Patrick & Co. Advocates advises fintechs, startups, corporates and institutions on data protection and data privacy compliance across Kenya — from ODPC registration and DPIAs to outsourced DPO services and cross-border data transfer advisory. If the

issues raised above touch your business, we can help you get ahead of them.

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This analysis is for general informational purposes and does not constitute legal advice. It draws on ODPC determinations and related High Court decisions from 2023–2026. Organisations should consult qualified legal counsel on their specific obligations.

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