⚖KENYA DATA PROTECTION JURISPRUDENCE · 2023–2026

Kenya's data protection case law so far: what 12 High Court decisions say about ODPC disputes and privacy rights

Every published High Court decision reviewing an ODPC determination, read together, tells a coherent story about where Kenyan data protection law is heading. This is that story — the forum questions, the liability questions, the compensation questions, and what they mean for privacy rights in Kenya more broadly.

ANALYSIS11 MIN READDATA PROTECTION · ADMINISTRATIVE LAW · PRIVACY RIGHTS

BY PATRICK MUCHANGI, FOUNDER & ADVOCATE — MUCHANGI PATRICK & CO. ADVOCATES · PUBLISHED JULY 2026

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Ask what Kenyan law actually says about a data protection dispute, and until recently the honest answer was: mostly the statute, and very little else. That has changed. Since the Office of the Data Protection Commissioner began issuing six-figure compensation orders in earnest, a real body of High Court jurisprudence has grown up around it — appeals under Section 64 of the Data Protection Act, 2019, judicial review applications testing the ODPC's own process, and constitutional petitions invoking Article 31 directly. Twelve decisions now form the backbone of that jurisprudence. Individually, each is a case note. Read together, they answer the questions every data controller, complainant and advocate in Kenya is currently asking: where do I file, who is actually liable, how much is a breach worth, and what happens when the regulator itself is the one at fault.

12
HIGH COURT DECISIONS REVIEWED

6/12
ODPC DETERMINATIONS SET ASIDE OR REDUCED ON REVIEW

2023-26
PERIOD THE JURISPRUDENCE SPANS

§1 The regulator's reach — and its limits

The single clearest trend across all twelve rulings is that Kenyan courts will enforce the Data Protection Act's substance, but they police the ODPC's own process and jurisdiction with equal rigour.

Two decisions capture this most sharply. In one, the ODPC pressed ahead to a compensation award while a passenger's real grievance — a wheelchair never provided — was still working through the airline's own internal resolution process; the High Court set the award aside as an overreach into a dispute that was never really about data at all, and repeated a principle that now runs through the entire body of case law: a technical violation of the Act is not, by itself, evidence of compensable harm under Section 65. In another, a determination reached on the mistaken premise that a respondent had simply gone silent — when a response had, in fact, been emailed weeks earlier — was exposed as a live risk of relying on a single, unverified channel of service.

The throughline for any business facing an ODPC complaint: the Commissioner's investigative powers are real and increasingly well used, but they are not unlimited, and a determination built on an incomplete factual record or an overextended mandate does not survive appellate scrutiny.

> *"The right to a fair hearing... is not a mere technicality but the bedrock of Kenyan jurisprudence."*
> *— AN Ongeri, J, Platinum Credit Limited v Data Protection Commissioner & Another*

§2 Choosing the right forum: appeal, judicial review, ELRC, or a constitutional petition

Section 64 of the Act gives a statutory right of appeal from an ODPC determination — but four separate rulings confirm it is not the only door, and picking the wrong one can be fatal to an otherwise strong case.

The dividing line the High Court keeps drawing is between being heard and disagreeing with the outcome, and never being heard at all. The former is a Section 64 appeal. The latter — a party who was genuinely denied any opportunity to respond before a determination was made — is treated as an exceptional circumstance under Section 9(4) of the Fair Administrative Action Act, opening the door to judicial review instead. A separate ruling narrows the High Court's own jurisdiction further: where a data protection complaint is rooted in a contract of employment, it may belong before the Employment and Labour Relations Court under Articles 162(2) and 165(5), not before the High Court at all — and running an appeal and a judicial review against the same determination at the same time is treated as an abuse of process in its own right.

A third strand deals with constitutional petitions. Where the relief actually sought — a permanent injunction, a constitutional declaration, general damages for a constitutional violation — is something the ODPC simply has no power to grant, the doctrine that a complainant must first exhaust the ODPC's own remedies does not apply. And a party cannot use a jurisdictional objection as an afterthought: one ruling held that admitting a court's jurisdiction earlier in a pleading forecloses raising a jurisdictional objection later without first amending that pleading.

PRACTICAL RULE OF THUMB

"I was heard but I disagree" → appeal. "I was never heard at all" → judicial review may be available. "The ODPC can't grant what I'm actually asking for" → a constitutional petition may be the only real route. "This is fundamentally an employment dispute" → check the ELRC's jurisdiction before filing anywhere else.

§3 Liability, data subjects, and what compensation actually costs

Three rulings settle recurring fintech and telco fact patterns, and together they are reshaping how compensation claims under Section 65 are argued and defended.

On liability, the position is now settled: a data controller cannot escape responsibility for unlawful processing carried out by its own sales agents acting within the scope of their delegated authority, and a controller that cannot produce its own agency agreements when asked should expect the court to draw an adverse inference against it. But settled liability has not meant unchecked quantum. The same rulings that affirm vicarious liability also revise ODPC compensation awards downward — sometimes substantially — on the basis that an award pitched at a level that risks the closure of a smaller respondent is punitive rather than compensatory, and that compensation must track actual proven damage or distress, not the size of the respondent's balance sheet.

A related question — who actually counts as a "data subject" — was tested where a man who had never been a customer of a SACCO kept receiving its account alerts after inheriting a recycled mobile number. The High Court held he was not a data subject in respect of that number at all, because no data about him, specifically, had ever been processed, and was blunt that the Act "should not be used as a cash cow" for the inconvenience of a recycled number. Read across all three rulings, the same two-part test keeps recurring: can the controller show its oversight of the agent relationship, and is the compensation figure actually tied to proven harm.

§4 When the ODPC is the problem: delay, mandamus, and enforcing an award

Two rulings look at the other side of the relationship — what happens when the regulator itself sits on a complaint, and what happens once it has actually issued a determination.

Where the ODPC acknowledges a complaint, assigns it a reference number, and then goes quiet well past the 90-day statutory determination window under Section 56(5), the High Court has confirmed that mandamus is available to compel action — and treated that statutory timeline as mandatory rather than aspirational. On the other side of an award, one ruling confirms that an ODPC determination is binding and enforceable as a court order under Regulation 14(5) of the Complaints Handling Procedure and Enforcement Regulations, that filing an appeal does not automatically suspend enforcement under Order 42 Rule 6, and that a respondent who wants breathing room must apply separately and promptly for a stay of execution.

§5 What it means for privacy rights in Kenya more broadly

Read alongside Article 31 of the Constitution, this case law is doing more than interpreting a single statute — it is defining how privacy rights actually get enforced in Kenya.

One useful data point comes from outside the ODPC process entirely: a shareholding dispute where a recording of a meeting was challenged on Article 31 and Data Protection Act grounds. The High Court held that an objector must actually demonstrate how their privacy was infringed — a bare invocation

of the Constitution or the Act is not enough on its own, and questions about how evidence was obtained are typically for full trial rather than a preliminary skirmish. The practical effect is that Kenyan courts are treating the constitutional right to privacy and the statutory data protection framework as complementary but distinct: the Constitution supplies the underlying right and the standard for limiting it, while the Act and the ODPC supply the ordinary enforcement mechanism — with a constitutional petition reserved for the cases the statutory scheme genuinely cannot reach.

For anyone tracking Kenyan data protection cases, ODPC enforcement trends, or privacy rights litigation more generally, this is the clearest signal yet that Kenya's courts are building a genuinely Kenyan jurisprudence on data protection — not simply importing GDPR reasoning wholesale, but working out, case by case, how Article 31, the Data Protection Act, 2019, and the Fair Administrative Action Act fit together.

KEY TAKEAWAY

Kenyan courts are enforcing the Data Protection Act's substance **and** policing the ODPC's own process just as strictly — and treating the constitutional right to privacy as a distinct, higher-order right that the statutory scheme does not exhaust.

§6 Frequently asked questions

Quick answers to the questions we're asked most often about ODPC disputes and Kenyan data protection litigation — each grounded in the case law above.

What is the ODPC and what does it do in Kenya?

The Office of the Data Protection Commissioner is Kenya's data protection regulator under the Data Protection Act, 2019. It investigates complaints from data subjects, issues determinations and compensation orders, and enforces the Act against data controllers and processors.

What have Kenyan courts said about data protection disputes so far?

Between 2023 and 2026, the High Court has decided a growing number of appeals, judicial review applications and constitutional petitions arising from ODPC complaints — addressing procedural fairness, the correct forum for a dispute, vicarious liability of data controllers, how compensation should be quantified, and how ODPC awards are enforced. See our individual case notes on the Blog for all twelve rulings.

How does the High Court protect privacy rights under Article 31 of the Constitution?

Courts require a claimant to demonstrate a specific, actual infringement of privacy rather than a bare invocation of Article 31 or the Act. Where the relief sought is one the ODPC has no power to grant, a claimant may proceed directly by constitutional petition instead of going through the ODPC first.

Are ODPC compensation awards being upheld on appeal?

Not automatically. Several of the largest ODPC compensation awards reviewed so far have been reduced or set aside — most often for lack of proven damage or distress, undisclosed evidence in the ODPC's process, or a complaint that fell outside the ODPC's jurisdiction to determine.

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IF AN ODPC COMPLAINT OR DETERMINATION HAS LANDED ON YOUR DESK

The forum you choose and the procedural record you build in the first 30 days usually decide the

outcome of an ODPC dispute — whether you are defending a complaint, appealing a determination, or enforcing an award that isn't being paid.

Muchangi Patrick & Co. Advocates represents complainants and respondents before the Office of the Data Protection Commissioner and on appeal, judicial review and constitutional petition before the High Court of Kenya.

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This overview draws on all twelve rulings in our case-by-case digest. Jump directly to any decision:

Undisclosed witness evidence sinks a KES 400,000 award
Platinum Credit Limited v Data Protection Commissioner & Another · [2026] KEHC 7257

Never being heard at all is the exception that unlocks judicial review
Republic v ODPC; BVB Lounge (Ex Parte) · [2026] KEHC 114

Vicarious liability holds — but so does proportionality
Premier Credit Ltd v ODPC & Another · [2026] KEHC 9467

Mandamus compels the ODPC to act after 90 days of silence
Republic v ODPC; HS & 2 Others · [2026] KEHC 3987

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KEHC 2023–26

This analysis synthesises published High Court judgments ([2026] KEHC series) reviewing determinations of the Office of the Data Protection Commissioner. It is prepared for general informational purposes, reflects our own analysis and characterisation of the case law, and does not constitute legal advice. See our individual case notes for full citations and access to each judgment on Kenya Law; organisations should consult qualified legal counsel before acting on any point summarised here.

Prepared by the Editorial Board of Muchangi Patrick & Co. Advocates · Nairobi · Not legal advice — consult qualified counsel before acting on this analysis.

⚖KENYA DATA PROTECTION & PRIVACY JURISPRUDENCE · VOLUME II · 2026

Kenya's data protection case law, Volume II: privacy rights, consent and digital identity beyond the ODPC

Our first jurisprudence review mapped twelve decisions on ODPC determinations. This second review looks at nineteen further High Court rulings that push Article 31 privacy rights into succession disputes, neighbour disputes, employment disputes, business acquisitions, and — for the first time — the regulation of artificial intelligence. Read together, they show how far Kenyan privacy law now reaches beyond the Data Protection Act's own complaints process.

ANALYSIS13 MIN READDATA PROTECTION · PRIVACY RIGHTS · ADMINISTRATIVE LAW

BY PATRICK MUCHANGI, FOUNDER & ADVOCATE — MUCHANGI PATRICK & CO. ADVOCATES · PUBLISHED JULY 2026

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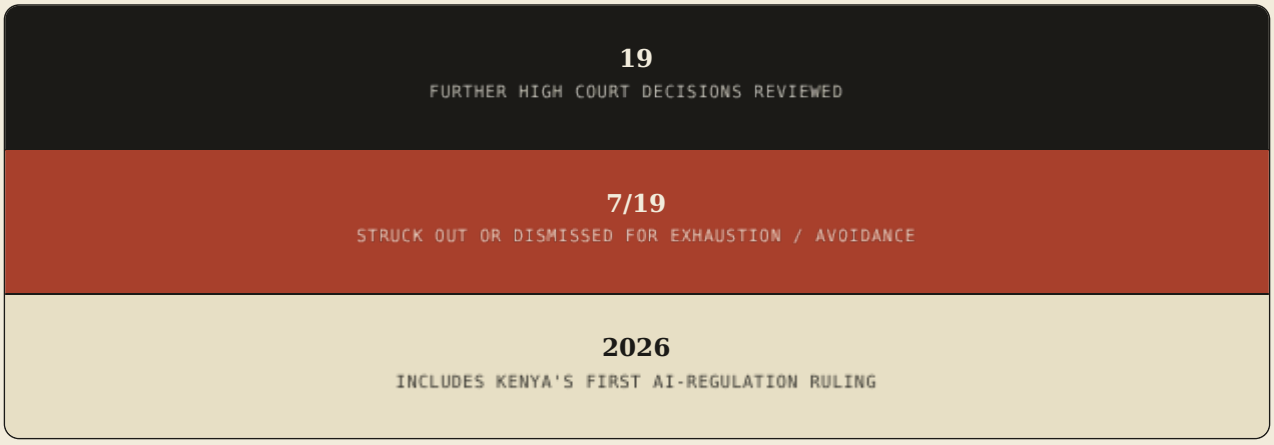
Volume I of this review asked a narrow question: how is the High Court handling appeals, judicial reviews and petitions arising directly out of ODPC determinations? Volume II asks a wider one. Once Kenyan litigants realised Article 31 of the Constitution could do independent work — not just as a gateway into the Data Protection Act, but as a freestanding right — they began raising it everywhere: in succession causes over DNA testing, in neighbour disputes over surveillance and WhatsApp groups, in employment and business-sale disputes over commercial use of a person's image, and in a landmark petition over the absence of any AI regulatory framework at all. Nineteen further 2026 KEHC decisions now answer, in practical terms, when a privacy claim needs to go through the ODPC first, when it can bypass the ODPC entirely, and what counts as protectable personal data outside the Act's own definitions.



§1 The exhaustion trap: when a petition is really an ODPC complaint

The single most common outcome across this second batch of rulings is dismissal or striking out — not because the underlying grievance was weak, but because the claimant went to the High Court before the ODPC.

Five separate petitions fell on this ground alone. A petitioner who alleged his phone messages were used without authorisation in a Succession Cause was told this was a collateral attack on proceedings already before another court. An advocate sued personally over documents he filed for a client was struck out because he was acting as agent, not as a wrongdoer in his own right, and because the real complaint was again a disguised attack on an evidentiary ruling elsewhere. A university employee who filed a constitutional petition just four days after lodging an ODPC complaint on the same facts was found to be forum shopping. A petitioner opposing an ODPC-adjacent objection on mental incapacity nonetheless lost on the separate, cleaner ground that clear statutory remedies existed and had not been tried. And a former employee whose image was kept on a company website after resignation lost entirely because he never approached the ODPC at all before petitioning.

The pattern across all five is consistent: Kenyan courts are not hostile to privacy claims, but they insist on the right sequence. A constitutional petition that could have been an ODPC complaint, or that collaterally attacks a decision already made elsewhere, will not survive a preliminary objection.

PRACTICAL RULE OF THUMB

Before drafting a privacy petition, ask three questions: has this been raised, or could it be raised, in another proceeding already under way? Has a complaint been lodged with the ODPC? And is the relief sought something the ODPC could actually grant? A "no" to the first two, or a "yes" to the third, means the petition is not yet ripe.

§2 Consent has an expiry date: image rights and commercial use

Four rulings on almost the same fact pattern — a business keeps using someone's photo commercially after the relationship that produced it has ended — together map out exactly what counts as valid, ongoing consent.

Where a business could not point to anything beyond a general notice at a venue entrance, or simply asserted implied consent from an old photoshoot, the claims succeeded: an advocate photographed at a business's premises was awarded Kshs 1.5 million after the Court held a blanket entrance notice is not specific, informed consent to commercial use; a former employee whose image was still being used years after his termination succeeded on the basis that consent to being photographed during employment does not survive indefinitely; and a company that acquired a competitor as a going

concern was found liable for continuing to display a former employee's image, because consent to the seller does not automatically transfer to the buyer or extend to a new commercial purpose, though the compensation was trimmed on appeal as excessive. Where a business instead produced a signed consent letter and a contemporaneous WhatsApp approval of the final image, the claim failed outright — allegations of forged consent must be specifically pleaded and proved, not simply asserted.

Read together, these four rulings settle a genuinely practical question for any Kenyan business that uses staff, client or visitor images commercially: consent is purpose-bound and time-bound, the burden of proving it rests on whoever wants to keep using the image, and a documented, specific authorisation is the only reliable protection once someone leaves, a business changes hands, or years pass.

> *"[Prior] consent... did not automatically transfer to the Appellant or extend to a new purpose." — on the acquisition of a business not carrying its predecessor's consent with it, Tulia Amboseli Safari Camp Limited v Opiyo & 2 Others*

§3 Privacy beyond the Act: digital identity, surveillance and genetic data

Three rulings extend Article 31 protection into territory the Data Protection Act does not squarely cover at all — recognising new categories of protectable personal information outside the Act's own definitions.

The most significant is a petition brought by prisoners over the unregulated reassignment of deactivated mobile numbers. The High Court held that a registered mobile number is itself a "digital identifier" attracting Article 31 protection, and ordered the Attorney General to develop safeguards against unfettered reassignment — with a hard deadline and a default order if nothing was done. A second ruling addressed neighbourhood harassment: persistent calls, secret filming of a residence, and a WhatsApp group set up specifically to discuss a resident were held to violate Articles 28 and 31, with damages of Kshs 1 million awarded, even though none of the respondents was a data controller in any conventional sense. A third, in a succession dispute, saw the Court decline to order a DNA test on a minor, holding that compelled genetic testing implicates both privacy and bodily integrity and will not be ordered where the underlying legal question can be resolved without it.

None of these three cases involved the ODPC at all. Together they confirm that Article 31 functions as a freestanding constitutional right that Kenyan courts will apply directly to new categories of personal information — digital identifiers, surveillance footage, genetic material — as they arise, rather than waiting for the Data Protection Act to catch up.

§4 Jurisdiction, access to information, and Kenya's first AI ruling

The final strand of this volume clarifies exactly how the High Court's data protection jurisdiction sits alongside the ODPC's, and shows the judiciary's first substantial engagement with regulating artificial intelligence.

One ruling put to rest, in the clearest terms yet, an argument data controllers had been raising in preliminary objections: that the existence of the ODPC strips the High Court of jurisdiction over data protection claims entirely. The Court rejected this as "mistaken and misconceived," describing the High Court's jurisdiction as staggered rather than absent — the ODPC investigates and determines first, and the High Court's constitutional role follows, either on appeal or through adoption and enforcement of the resulting award. A separate ruling confirmed that the right of access to information under Article 35 extends to private entities, not just public bodies, where the information is needed to protect a right, and that using a relative's KRA PIN to file statutory returns without their knowledge is an independent violation of Article 31.

The most closely watched decision, however, is the first Kenyan ruling to squarely engage with

regulating artificial intelligence. Petitioners sought a broad moratorium on "high-risk" AI systems generally. The Court declined to issue anything so undefined, but recognised the underlying case for AI regulation, granted leave to amend the petition to name specific systems, joined the Kenya National Commission on Human Rights, and adopted a structural interdict requiring the government to file periodic reports on progress toward an AI regulatory framework. It is a template — specificity required, but active judicial oversight guaranteed — that is likely to shape how AI regulation litigation proceeds in Kenya well ahead of any dedicated statute.

KEY TAKEAWAY

The High Court's data protection jurisdiction is deferred to the ODPC, not surrendered to it — and Kenyan courts are already applying the same constitutional privacy toolkit built for the Data Protection Act to entirely new questions, from recycled phone numbers to artificial intelligence.

§5 Frequently asked questions

Quick answers to the questions we're asked most often about privacy litigation and ODPC disputes in Kenya — each grounded in the case law above.

Do I need to complain to the ODPC before filing a privacy petition?

In most cases, yes. Kenyan courts have dismissed or struck out several petitions filed without first lodging an ODPC complaint, including one filed only four days after a complaint was submitted on the same facts. The exception is where the petition raises a genuine constitutional question the ODPC cannot resolve, or seeks a remedy the ODPC has no power to grant.

Can a business keep using a former employee's image for advertising?

Generally no, without fresh, specific consent. Consent given for a photoshoot during employment does not extend indefinitely, and does not transfer automatically to a new owner if the business is sold. Continued commercial use without fresh authorisation has resulted in damages awards running into the millions of shillings. See our individual case notes on the Blog for the four rulings on this point.

Is a mobile phone number treated as personal data in Kenya?

Yes. The High Court has recognised a registered mobile number as a digital identifier protected under Article 31 of the Constitution, and ordered the government to develop safeguards against unregulated reassignment of deactivated or recycled numbers.

Does the ODPC's existence remove the High Court's jurisdiction over data protection claims?

No. The High Court has confirmed its jurisdiction over data protection claims is "staggered," not absent — the ODPC investigates and determines first, and the High Court's role, on appeal or in enforcing the resulting award, remains fully intact.

How is Kenya regulating artificial intelligence?

There is no dedicated AI statute yet. In 2026, the High Court declined to issue a broad moratorium on undefined AI systems, but recognised the need for regulation, ordered the petition amended with specific systems named, joined the Kenya National Commission on Human Rights, and required government progress reports — an active oversight approach pending fuller legislation.

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IF A PRIVACY, IMAGE-RIGHTS OR ODPC MATTER HAS LANDED ON YOUR DESK

Whether the question is exhaustion, consent, digital identity or a straightforward ODPC appeal, the forum you choose and the evidence you can produce usually decide the outcome.

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