

Case *Note*

CASE NOTES & COMMENTARY
ODPC & HIGH COURT, KENYA

ONE RULING, DIGESTED ON ITS OWN – THE FACTS, THE HOLDING, AND THE PRACTICE POINT

📅 [2026] KEHC 3191

A constitutional petition can outrun the ODPC's own remedies

Bore v Alliance Leasing Limited & Another

PRELIMINARY OBJECTION DISMISSED CASE NOTED DATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

Facing a petition alleging covert surveillance, unauthorised access to M-Pesa and bank records, and adverse decisions taken without notice, the respondent argued the whole dispute should have gone to the ODPC first under Sections 8, 9, 56 and 57 of the Act. The Court held that whether a dispute is "purely statutory" or genuinely constitutional cannot be decided on the pleadings alone at a preliminary stage, and — critically — that the Data Commissioner simply cannot grant some of the relief being sought: the ODPC cannot interpret the Constitution, issue permanent injunctions, or award general damages for constitutional violations. Where those are the actual reliefs sought, exhaustion doesn't apply.

PRACTICE POINT

If the relief sought (a permanent injunction, general damages, a constitutional declaration) is something the ODPC has no power to grant, a preliminary objection based on exhaustion is unlikely to succeed.

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HOW THIS TOUCHES A LIVE ODPC MATTER

Whether you are defending a complaint, appealing a determination, or bringing a privacy claim of your own, the forum you choose and the procedural record you build early usually decide the outcome.

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.

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