

**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 7059

# The ODPC can't fine a customer-service complaint dressed up as data protection

Kenya Airways PLC v Obano

APPEAL ALLOWED · CASE NOTED · DATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK &amp; CO. ADVOCATES

A passenger's real grievance was that the airline failed to provide a wheelchair for his elderly mother; the data protection angle — a refused request for a recorded call — was secondary. The ODPC nonetheless proceeded to a KES 250,000 award while the airline's internal resolution process was still active, without waiting for that process to conclude. The Court confirmed that a voice recording is personal data and that access rights under Section 26 are real, but held that the Commissioner breached the doctrine of exhaustion by bypassing internal ADR, and that compensation under Section 65 needs actual proof of damage or distress — not just a technical violation. The determination was set aside in full as an overreach of the ODPC's mandate.

**PRACTICE POINT**

A data-subject-access complaint is not a backdoor for the ODPC to adjudicate the underlying service dispute — and "a right was violated" is not, by itself, evidence of compensable harm.

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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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