

Case NoteCASE NOTES & COMMENTARY
ODPC & HIGH COURT, KENYA

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

[2026] KEHC 5928

An advocate's image used to advertise a business without consent draws Kshs 1.5 million in damages

Kipchirchir v Hornbill Rongai Limited

DAMAGES & PERMANENT INJUNCTIONCASE NOTEDATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

An advocate's image and an accompanying caption were published on social media for commercial advertising without his consent. The business argued he had voluntarily posed for the photograph at its premises, where a general notice was displayed at the entrance. The Court held that a general notice at an entrance is not specific, informed consent to commercial use of a person's image, that the doctrine of exhaustion did not apply because the claim raised constitutional questions beyond the ODPC's reach, and that the unlawful dissemination was an intrusion into the plaintiff's private life under Articles 28 and 31. A separate defamation claim failed for lack of evidence that the plaintiff's reputation had actually been affected, but the privacy claim succeeded with a substantial damages award and a permanent injunction.

PRACTICE POINT

A blanket notice at a venue entrance is not consent to use a visitor's image commercially — and a failed defamation claim does not drag down a well-evidenced privacy claim running alongside it.

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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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means no petition, however
genuine the grievance

not consent to use your image
forever, even after you leave →



This case note summarises and comments on a published High Court judgment reviewing a determination of the Office of the Data Protection Commissioner, or a first-instance privacy matter. It is prepared for general informational purposes, reflects our own analysis and characterisation of the judgment, and does not constitute legal advice. The citation is provided so readers can access the full judgment on Kenya Law; organisations should consult qualified legal counsel before acting on any point summarised here.

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