

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 3053

# Posing for a work photoshoot is not consent to use your image forever, even after you leave

Matanta v Old Boma Limited t/a Saruni Basecamp

DECLARATIONS, INJUNCTION & DAMAGES CASE NOTED DATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

Years after his employment ended, a former employee discovered his images still being used on the company's social media to advertise its business. The company argued he had given implied consent by participating in the original photoshoot. The Court held that consent to being photographed during employment does not extend to indefinite commercial use after termination absent clear authorisation, that the burden of proving consent for the continued use rested on the company (which produced no documentary evidence of it), and that privacy is not confined to intimate images — it extends to control over the commercial use of one's likeness. Damages and a permanent injunction followed.

#### PRACTICE POINT

Consent obtained for one purpose, at one point in time, does not travel forward indefinitely. Employers who want to keep using an employee's image after they leave need a fresh, specific, documented authorisation to do so.

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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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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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